Neutral Citation Number: [2026] EWCA Civ 752

Case No: CA-2025-002119

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE COUNTY COURT AT CENTRAL LONDON
Deputy District Judge Gwynfor Evans
J00MY851

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 June 2026

Before:

LORD JUSTICE BEAN
(Vice President, Court of Appeal, Civil Division)
LORD JUSTICE STUART-SMITH
and
LADY JUSTICE YIP

- -

Between:

EVA COBIJA SINTES

Claimant/Respondent

-and-

LONDON BOROUGH OF TOWER HAMLETS

Defendant/Appellant

- -
- -

Joshua Hedgman (instructed by **DAC Beachcroft LLP**) for the **Appellant**
Darragh Coffey (instructed by **Leigh Day Solicitors**) for the **Respondent**

Hearing dates: 28-29 April 2026

- -

Approved Judgment

This judgment was handed down remotely at 10.00am on 17 June 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Stuart-Smith:

Introduction

1. This appeal arises out of a claim for personal injuries sustained by Ms Sintes when she tripped and fell in Whitechapel Market after dark at about 5.00 pm on 19 December 2019. Ms Sintes sued the local authority ("Tower Hamlets") alleging negligence and nuisance. By the time of trial, quantum had been agreed and the trial was of liability only. It was heard by Deputy District Judge Gwynfor Evans ("the DDJ"). On 30 July 2025 the DDJ handed down his judgment in writing, finding in favour of Ms Sintes. The DDJ gave Tower Hamlets permission to appeal. On 1 September 2025 Phillips LJ accepted the transfer of the appeal to this Court. We heard the appeal on 28 and 29 April 2026.

2. For the reasons set out below, I would allow Tower Hamlets' appeal.

The factual background

3. At the time of the accident Ms Sintes was aged 35 and was 36 weeks pregnant. She had just alighted from a bus at Stop 'B', Whitechapel Station, Royal London Hospital and was on her way to a tour of the maternity ward at the Hospital. The bus stop was located in the middle of the Market. On her way towards the hospital she tripped over a number of metal poles which were protruding from a trolley over ground designated for pedestrians on the public highway. The poles were on the footpath in the gap between the adjacent Market pitches 67 and 68. The weather was cold and wet, and light levels were low. Ms Sintes did not see the poles before she tripped over them. As she fell, she suffered a nasty fracture to her right ankle. Happily, her unborn child was not affected and she gave birth to a healthy baby in January 2020.

4. The poles, which were components of a market stall, were approximately 2.5m to 3m long. They had been left unattended, lying horizontally on a trolley that was beside a litter bin along with cardboard waste and a pink-and-white-striped tarpaulin. The poles extended from the end of the trolley for at least one metre across the footpath. The poles were not marked in any way to warn of their presence or to identify their owner. The claim proceeded on the assumption that they had belonged to or were the primary responsibility of an unidentified and unidentifiable market trader. It was not alleged that they belonged to Tower Hamlets and there was no evidence that they had been placed in that position by Tower Hamlets. In fact, no one could say who left them there as no one had seen them being left so as to be able to say with any precision how long they had been in that position. The length of time that they had been there was one of the issues at trial and in this appeal.

5. Tower Hamlets is the Licensing Authority for the market traders at Whitechapel Market pursuant to the London Local Authorities Act 1990 ("the 1990 Act"). The relevant highway authority for the footpath was Transport for London ('TfL'), not Tower Hamlets. It is not alleged that Tower Hamlets was the occupier of the Market Area or the highway.

The pleaded positions of the parties

6. By her Particulars of Claim Ms Sintes' pleaded case was that:

i) The poles created an obstruction on the public footpath and, as such, constituted a public nuisance;

ii) Tower Hamlets as the authority with the responsibility for licensing and management of the street trading in the Market, caused, permitted, suffered the existence of, adopted or otherwise failed to abate the public nuisance (a) by allowing the Market to be run in such a way as would create this obstruction on the adjacent footpath, thereby posing a danger to the public; and/or (b) by failing to remove the poles or erect a warning drawing attention to their presence;

iii) As a result of this public nuisance, Ms Sintes suffered injury loss and damage;

iv) Further or alternatively, her injuries were caused by negligence on the part of Tower Hamlets in that it failed to take reasonable care to ensure that the Market was managed and run in such a way that would not create dangers or hazards to ordinary users of the adjacent footpath;

v) Tower Hamlets was the responsible local authority and was therefore responsible for the licensing, management and control of the street trading at the Market. It exercised powers of control, including the imposition of conditions upon licensed street traders; and it exercised powers of supervision. "As such", it owed a duty to take reasonable care to ensure that the street trading at the Market was conducted in such a way that it would not create foreseeable dangers or hazards to ordinary users of the adjacent footpath such as Ms Sintes;

vi) The poles had been abandoned in that location "for some time". As such Tower Hamlets by its employees, servants or agents should reasonably have been aware of their presence across the footpath;

vii) Ms Sintes' injury was caused as a result of a public nuisance for which Tower Hamlets was responsible. The poles were related to and caused by the operation of the Market. Tower Hamlets was or should have been aware of the presence of the nuisance on the highway but failed to take action to ensure that the poles were promptly removed or a warning erected. "Thus" Tower Hamlets was responsible for permitting the market to be run in such a way as would create a public nuisance on the highway. Tower Hamlets "permitted, suffered the existence or continuation of, adopted, or otherwise failed to abate that public nuisance". As a result Ms Sintes tripped and suffered personal injury for which Tower Hamlets is liable in public nuisance;

viii) Further or alternatively Tower Hamlets was liable to Ms Sintes in negligence, the particulars of negligence alleged being that it:

a) Failed to take any or any sufficient action to ensure that the traders in the market would not leave poles obstructing the public footpath such that they would create a danger to ordinary users; and/or

b) Failed to take any or any sufficient action to ensure that the poles were removed; and/or

c) Failed to take any or any reasonable action to ensure that a warning was erected drawing attention to the poles; and/or

d) In all the circumstances failed to ensure that the Market was operated in a safe and reasonable manner such that its operation did not create a foreseeable danger to the ordinary reasonable users of the adjacent footpath.

7. By its defence, Tower Hamlets pleaded that:

i) While it was at all material times the licensing authority for the Market, it was denied that Tower Hamlets operated the Market: its primary responsibility was to grant street trading licences to stallholders, each of whom was required to carry public liability insurance;

ii) Part of its remit was to carry out periodic inspections of the Market but that was limited to the pitches within the Market itself and not to the adjacent highways. Such inspections, together with its licensing terms and conditions were designed to ensure that its licensees traded in compliance with "street trading" as prescribed by the 1990 Act. The safe setting-up, maintenance and dismantling of the pitches was the responsibility of the relevant individual traders;

iii) In the premises, Tower Hamlets admitted that it was responsible for the licensing of the Market and for some aspects of the management of the Market; but it denied that it had any management or control responsibilities wider than those set out in its 2018 Street Trading Licence Conditions;

iv) It was denied that the 2018 Licence Conditions amounted to or evidenced an assumption of responsibility by Tower Hamlets of a duty to ensure that Tower Hamlets did not create a nuisance on the highway. The allegation that it caused or permitted a nuisance or failed to abate one was denied;

v) Ms Sintes' claim should be directed to the relevant stallholder or stallholders;

vi) Tower Hamlets owed no duty of care in negligence to ensure that the highway was kept clear of obstructions where it did not itself create such obstructions or obstacles;

vii) If any duty of care was owed to inspect or address hazards on the highway, Ms Sintes was put to proof that the presence of the poles on the highway was due to want of care on its part.

The 1990 Act, Tower Hamlets' Licence Conditions and Tower Hamlets' 2017 Standard Operating Procedures and Processes for Market Officers ("the SOPP")

8. It is convenient to introduce at this point Part III of the 1990 Act, which concerns "street trading" as defined, and Tower Hamlets' Licence Conditions as they establish the statutory scheme and Tower Hamlets' implementation of the requirement that street trading licences are to be subject to conditions. The SOPP looms large in the DDJ's reasons, and I therefore introduce them in order to set the stage for an understanding of the DDJ's reasoning and the issues that arise on appeal.

Part III of the 1990 Act

9. Section 23(1) provides for the licensing of street traders and that:

> "Subject to the provisions of this Part of this Act it shall be unlawful for any person to engage in street trading in any licence street within a borough unless that person is authorised to do so by a street trading licence or a temporary licence."

10. Section 24(1) provides that, if a borough council consider that street trading should be licensed in their area they may from time to time pass a resolution designating any street within the borough as a "licence street".

11. Section 25(1) provides that an application for a street trading licence shall be made in writing to the borough council and shall state various particulars including the licence street in which and the days on which and the times between which the applicant wishes to trade, the description of the articles, things or services in which he desires to trade and such other particulars as the borough council may reasonably require. Section 25(4) specifies circumstances in which street trading licences shall not be granted, which include (at subsection 25(4)(b)) that a licence shall not be granted unless the borough council are satisfied that there is enough space in the street for the applicant to engage in their desired trading "without causing undue interference or inconvenience to persons of vehicular traffic using the street." Subject to section 25(4), section 25(5) mandates that the borough council "*shall grant* an application for a street trading licence" unless they consider that the application should be refused on one or more of the grounds specified in section 25(6). The grounds specified in section 25(6) include that "the applicant has failed to provide or to identify suitable or adequate premises for the storage of any receptacles or perishable goods in which he proposes to trade when street trading is not taking place": see section 25(6)(e).

12. A licence granted under section 25 shall specify the conditions that apply to it: see section 27(1)(b). Section 27(3) provides that the borough council "may make regulations prescribing standard conditions which they may attach to the licence on the occasion of its grant or renewal." The borough council is required by section 27(4) to undertake consultation and to consider representations before making such regulations. Section 27(7) provides that:

> "Without prejudice to the generality of subsection (3) above the standard conditions shall include such conditions as may be reasonable—
>
> (a) identifying the street or streets in which and the position or place in any such street at which the licence holder may sell or expose or offer for sale articles or things, or offer or provide services under the authority of the licence;
>
> (b) identifying the class or classes of articles, things or services which the licence holder may so sell or expose or offer for sale or provide;

> (c) identifying the day or days on which and the time during which the licence holder may sell or expose or offer for sale articles, things or services as aforesaid;
>
> (d) identifying the nature and type of any receptacle which may be used by the licence holder or in connection with any sale or exposure or offer for sale or provision of services and the number of any such receptacles which may be so used;
>
> (e) requiring that any receptacle so used shall carry the name of the licence holder and the number of his licence;
>
> (f) regulating the storage of receptacles or perishable goods;
>
> (g) regulating the deposit and removal of refuse and the containers to be used for the deposit of such refuse and their location pending its removal;
>
> (h) … ."

13. Section 28(1) gives the borough council power to revoke a licence if they are satisfied of a number of specified circumstances including:

> "(a) owing to circumstances which have arisen since the grant or renewal of the licence, there is not enough space in the street in which the licence holder trades for him to engage in the trading permitted by the licence without causing undue interference or inconvenience to persons or vehicular traffic using the street; or
>
> …
>
> (f) that since the grant or renewal of the licence, the licence holder has failed to make provision for the suitable and adequate storage of the receptacles used by him for trading or for any perishable goods in which he trades when trading is not taking place; or
>
> (g) that since the grant or renewal of the licence, the licence holder has persistently failed to remove to a place of storage the receptacles used by him for trading; or (h) that the licence holder has persistently failed to comply with any condition of his licence."

14. Section 30 makes provision for a person aggrieved by a decision of the borough council to refuse to grant or renew a licence or to revoke an existing licence to appeal to a Magistrates Court with provision for a further appeal to the Crown Court. In other circumstances there may be a right of appeal to the Secretary of State, whose decision shall be final: see section 30(11).

15. Section 32 makes provision for the borough council to recover fees and charges including (by section 32(1)) the administrative costs incurred in connection with their functions under part III of the Act and:

> "(2) A borough council may recover from licence holders such charges as may be sufficient in the aggregate taking one year with another to cover the reasonable costs, not otherwise recovered, of—
>
> (a) the collection, removal and disposal of refuse or other services rendered by them to such holders; and
>
> (b) the cleansing of streets in which street trading takes place in so far as that cleansing is attributable to such trading; and
>
> (c) any reasonable administrative or other costs incurred in connection with the administration of this Part of this Act; and
>
> (d) the cost of enforcing the provisions of this Part of this Act."

16. Section 34(1) provides that any person who contravenes any of the conditions of a street trading licence shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale (i.e. £1000 in today's money). Similarly, section 38(1) provides that any person who engages in street trading in a street which is not a licence street or who engages in street trading in a licence street without the authority of a licence shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3.

17. The Act makes specific provision in relation to "receptacles", which are defined by section 21 as including "a vehicle or stall and any basket, bag, box, vessel, stand, easel, board, tray or thing which is used (whether or not constructed or adapted for such use) as a container for or for the display of any article or thing or equipment used in the provision of any service." It is common ground that the poles involved in Ms Sintes' accident formed part of a stall and were therefore within the statutory definition of "receptacle".

18. Section 33 provides:

> "(1) A borough council may sell or let on hire or otherwise provide to any person holding a street trading licence or a temporary licence under this Part of this Act receptacles for use by him in street trading.
>
> (2) A borough council may provide and maintain accommodation for the storage of receptacles and containers for the deposit of refuse arising in the course of street trading and for that purpose may—
>
> (a) adapt any premises or erect any buildings on any land belonging to them but not already appropriated for such purpose; and

> (b) make such charges as they think fit for the use of such accommodation."

19. Section 35(1) provides:

> "Where any receptacle used by a licence holder is not removed to a place of storage on the cessation of trading on any day it shall be lawful for the borough council to cause it to be removed to a place of storage and to recover from the licence holder the costs incurred by them in removing and storing the receptacle."

20. After some consideration it was accepted by Mr Hedgman on behalf of Tower Hamlets that, in a Market where there are very many street traders who may decide to cease trading at different times, the words "cessation of trading on any day" in section 35(1) are to be understood as referring to cessation of trading by an individual trader rather than to the time when the last trader ceases and the Market closes down for the night. I would endorse that understanding, which is consistent with and reinforced by the reference to recovering costs from "the licence holder" (singular) who has used the receptacle that has not been removed.

21. Pausing there, it will be noted that every provision relating to the borough council is expressed as a power save for section 25(5) which is expressed as a positive obligation to grant a licence, subject to the provisions of sections 25(4) and (6). It will also be noted that section 32 contemplates the provision of services by Tower Hamlets to licence holders and for Tower Hamlets to charge licence holders for the services rendered.

Tower Hamlets' Regulation and Standard Conditions

22. Tower Hamlets' relevant Regulation and Standard Conditions were made pursuant to section 27(3) of the 1990 Act in 2018. They are detailed and, in general terms, impose clear restrictions on how and when a licence holder may street trade. I set out those that seem to me to be most relevant to the issues in this appeal, having read them in the wider context of the Conditions as a whole and Part III of the 1990 Act. Where appropriate I have added emphasis.

23. Condition 2 (headed "General Conditions") provides:

> "2.2 A licence holder shall at all times comply with these conditions. *A person who contravenes any of the conditions of a street trading licence may be guilty of an offence and/or subject to appropriate enforcement sanction in accordance with our enforcement policy.* Any contravention of conditions by an assistant shall be regarded has having been committed by the licence holder."
>
> …
>
> 2.6 *The business activities of the licence holder shall comply with and be conducted in a manner that conforms with all relevant legislation enforced by the local authority* or other

> agencies. *Particular attention is drawn to general health and safety*, food safety, trading standards, fire prevention, highways regulation. Licence holders must also comply with appropriate local requirements and bye-laws. *Failure to comply with this condition will result in enforcement action* being taken and does not preclude separate sanctions being applied to the licence holder or their assistants for any breach committed.

24. "Enforcement sanction" is defined in condition 1 as including but not restricted to: "prosecution, licence suspension, revocation, variation of licence conditions, imposition of further conditions, civil recovery action, injunction or a combination of these as considered appropriate."

25. Condition 3(1) states that "the licence is merely consent to trade under the Act" and does not constitute any other approval that may be required (including highways consents) which it is the responsibility of the licence holder to obtain and adhere to. Condition 3.8 states that the trader shall trade only from the position/pitch which is indicated on the licence. Timings set out in an appendix determine when set up may begin and the time by which a licence holder's receptacle, equipment, stock and vehicle are to be clear of the market. Condition 3.13 states:

> "The trading area shall not exceed the dimensions specified on the licence and any pitch limits marked on the ground or otherwise identified on the licence during trading hours, except during immediate re-stocking. *NO goods, boxes, containers, displays, waste or any other article shall be placed outside the perimeter or within the immediate vicinity of the pitch limits except during immediate re-stocking and shall not at any time cover or obstruct any* fire hydrant or public utilities access point or *pedestrian access to bus stops or crossings, or the free flow of open traffic lanes*."

26. Condition 7(1) states that licence holders are at all times obliged to maintain third party public liability insurance through a recognised insurer with a minimum level of £5 million. Condition 7(1) provides for original insurance certificates to be provided to Tower Hamlets' Markets Service. Condition 7(4) prohibits licence holders from trading unless they have valid insurance cover and contravention of the condition will result in appropriate enforcement sanction being applied.

27. Condition 11 governs trading times. Condition 11.5 states:

> "*On each trading day, licence holders must ensure that all of their stall/receptacle*, stock and any vehicles *have been removed from the markets by the hours specified in the attached schedule*, to allow the cleansing process to commence. *Removal shall be to a place of storage off the public highway. Any receptacle,* goods or similar item *left on the market or adjacent street after this time may be removed by the Council and taken to a place of storage,* the costs of which we may seek to recover from the licence holder or licence holders responsible. Failure to pay any costs or charges for the removal within 28 days of their being

> demanded will result in the disposal of the barrow, stall, receptacle or vehicle, possibly without further notice."

28. Condition 13 relates to stalls and receptacles. Stalls are defined as "any structure approved by us that is used by a street licence holder for the display of goods or in connection with their business and which occupies a licensed street trading pitch, including … any additional structure, equipment or receptacle used as part of the stall or business." Receptacles are defined in the conditions in terms that are almost the same as the statutory definition: the differences don't matter. Condition 13.1 requires that stalls and receptacles do not exceed dimensions set out in the licence and that "any receptacle must be approved by the Market Services before use, following advice from the appropriate health and safety bodies." Condition 13.3 states:

> "*Licence holders are required to ensure that* the goods they sell and those which are connected with their stall and *any article or receptacle used for storing or displaying them are kept within the pitch limits at all times*, except during immediate restocking. …"

29. Condition 13.5 states:

> "Licence holders and their assistants are required to comply with all current health and safety legislation. For example, they must make sure that any awning, sheet, cover, screen, clip, tie or other construction or means of support is secured in such a manner that it does not cause a hazard or nuisance to any person. The pitch area is also to be kept free of trip hazards, for example not covered in cardboard sheeting or similar, with the exception of approved ground sheeting whilst gangways must be clear of obstruction at all times. *We reserve the right to suspend trading on the grounds of obstruction to the highway, health and safety concerns or for similar reasons*."

30. Condition 14 relates to waste and refuse and requires licence holders to comply with and to pay charges for waste management arrangements which Tower Hamlets may make. Condition 14.1 includes the stipulation that:

> "the licensee shall keep the pitch area clean and swept of any debris throughout the trading day, in particular shall be the duty of every licensee to pick up all litter, debris packaging and detritus both within and outside their pitch area that has been produced in the course of his/her business or could reasonably be assumed to have been so produced."

Condition 14.3 provides:

> "Any arrangements that we make in respect of cleansing the market areas does not absolve licence holders or their assistants of any responsibility under any relevant environmental protection legislation. Failure to provide sufficient evidence of compliance will be deemed a breach of conditions."

To similar effect, Conditions 14.5-14.11 imposes requirements upon licence holders in relation to waste and refuse in the "market area", which is defined by condition 1.15 as "any pavement, road or path that is within a designated market area or a road … that are adjacent to any street where a market is in operation."

31. Condition 17 is headed "Enforcement". Conditions 17.1 and 17.2 provide:

> "17.1 Any person who contravenes any of the conditions of their licence shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 … . *The Council reserves the right for its authorised officers to prosecute* any person who contravenes the conditions of their licence.
>
> 17.2 Where the Council does not prosecute in the courts any person who contravenes any of the conditions in their licence may be subject to one of the following penalties in their licence.
>
> - The issue of verbal or written warnings
>
> - The issue of fixed penalty notices
>
> - Seizure of goods or other materials
>
> - Suspension of trading rights …"

32. Under the heading "Health & Safety – General", condition 18.1 states:

> "No licence holder, registered assistant or other person acting on behalf of the licence holder must endanger the health and safety of any other person."

33. Pausing once more, it will be noted that the conditions place responsibility for safe trading squarely on the licence holders, backed by the threat of prosecution and/or revocation of their licence in case of non-compliance and by the requirement that they have £5 million third party insurance cover if they are to trade at all. Unsurprisingly, the conditions dovetail with the provisions of the statute, particularly with respect to section 27(7). Furthermore, the statutory scheme, as implemented by the licence conditions place the primary obligations for conducting the market upon the licence holders, with special provision being made that gives Tower Hamlets a power that they would not otherwise have to intervene if the licence holders fail to discharge their obligation to remove their receptacle: see section 35(1) and condition 11.5. This is not so much supervision or control as empowered backup to mitigate the consequences of non-compliance by the licence holder.

The SOPP

34. As its name suggests, the SOPP made provision for what Market Officers should be doing during specified time-slots between 8.00 am and 7.30 pm. The SOPP covers supervision and potential enforcement of licence conditions ranging from verifying public liability insurance validity to ensuring that abandoned/unused stalls and trolleys/rigs are removed from the market area and that clear access is maintained to crossings and bus stops. Other provisions relate to the containment and removal of

waste and cleansing operations. Some, as detailed below, refer directly to ensuring the absence of obstructions.

35. The entries for the late shift (from 2.45-6.00 pm) are typical and are most relevant to the circumstances of Ms Sintes' accident:

> "• Officer(s) on site 14.45 pm to 18.00 pm
>
> o To have copy of completed trading records and footway licence list
>
> o To ensure all registered temporary traders still present on pitch. Deal appropriately with any missing traders report/close down stall etc
>
> o To ensure public footway licences are correct size, displaying correct items and no sales taking place from outside premises
>
> o To report any unlicensed displays
>
> o To ensure on-going compliance of licence conditions, containment of waste etc
>
> o To record who is trading from pitches ensuring licensee or registered assistant present
>
> *o To ensure all social space, bus stops, crossing and walkways are clear of obstruction* [Emphasis added]
>
> o Prepare traders for next waste collection ensure cleansing operatives present and working
>
> o Count how many bins remaining on the market
>
> o To make notes and report to office as necessary
>
> o To report contraventions as necessary using form provided"

36. In addition to the entry highlighted above, other entries particularly relied upon by Ms Sintes include:

i) "Ensure no abandoned items on footway, bus stops and crossings clear": first time slot;

ii) "Ensure all unused items – rigs, boxes, trolleys and crates are removed from the market area and clear access maintained to crossings and bus stops and social spaces clear of items": 8am to 9 am;

iii) "Ensure all unused stalls, trolleys etc removed from the market area": 9 to 10.40 am;

iv) "To ensure all abandoned/unused rigs removed from market area": ibid;

v) "Ensuring all unused rigs and other items removed from the market": 10.45-11.15 am;

vi) "To ensure all social space, bus stops, crossing and walkways are clear of obstruction and all unused items removed from market area": 11.15 am to 12.30 pm;

vii) "To ensure all social space, bus stops, crossing, bin corrals and walkways are clear of obstruction": 12.45-2.15 pm.

37. Some of the entries are stated to be dependent upon resources, staffing levels and availability, how many officers are on duty and other market priorities. Others are not stated to be subject to such considerations. The DDJ accepted Mr Uddin's evidence that staffing availability was a general concern and that there may sometimes not be an officer available on the late shift, as was the case on the day of the accident [J77-81].

38. The DDJ relied upon the SOPP as demonstrating the level of control exercised by Tower Hamlets. That is true in a general sense; but on closer analysis they may also be characterised as the steps that Tower Hamlets intended should be taken by its Market Officers to ensure compliance by street traders with their licence conditions. That supervisory and enforcement role derives from the provisions of the 1990 Act: see, for example, section 28(1) and section 32(2)(1)(d). In addition, it is to be borne in mind that the collection, removal and disposal of refuse is treated as provision of services to licence holders: see section 32(2)(a), which does not purport to be an exhaustive list.

The judgment of the County Court

39. The judgment of the Deputy District Judge was long and, for the most part, clearly expressed. I summarise its main features below. Although I would allow the appeal, I would wish to pay tribute to the diligence with which the DDJ approached the difficult task that he had been assigned.

40. After introductory sections, the DDJ identified the issues that he was required to determine as:

i) Did Tower Hamlets owe Ms Sintes any duty in respect of any danger or public nuisance?

ii) Did the poles amount to a danger or public nuisance?

iii) Even if they did, was Tower Hamlets in breach of any duty?

iv) Causation (linked to breach): did Tower Hamlets' alleged breach cause Ms Sintes' accident?

v) Was there any contributory negligence by Ms Sintes?

41. This formulation is not entirely clear and may have sowed the seeds of confusion by eliding concepts relating to the separate torts of negligence and nuisance. Having formulated the issues in this way, the first main section of the judgment was headed "Did the Defendant owe the Claimant a Duty of Care?" [J46]. The DDJ reviewed the materials upon which Ms Sintes relied, which included (a) the Standard Licence

conditions, (b) the SOPP, (c) Tower Hamlets' "Whitechapel Market Plan" dating from about 2021 ("WMAP") which identified lack of storage, market structures being left on-site, lack of pedestrian through-ways in the market area and other "challenges", and (d) the fact that a bid was made for "levelling-up" funds to improve the general perception of the Market including the possibility of redesigning stalls so that they could be dismantled and safely stored. She also relied upon the evidence of Tower Hamlets' employee, Mr Uddin, which was said to illustrate "the power of the Markets Officers to remove abandoned items themselves if something were to be considered unsafe and to enforce compliance with the SOPP"; and the evidence of another Tower Hamlets' Officer, Mr Patchell, that a Markets Officer would detect and remove any trollies blocking the public footpath.

42. The DDJ summarised Ms Sintes' case at [J47]:

> "The claimant's overall submission … is that there has been an assumption of a significant degree of responsibility and control by [Tower Hamlets] over the manner in which market traders conduct themselves. That includes the defendant's having powers to remove obstructions or issues if detected with respect to users of the footpath and [Tower Hamlets'] … longstanding awareness that there are issues faced for pedestrians with the Market run in such a way."

43. On this basis it was Ms Sintes' case that there was liability in nuisance and that there was liability in negligence because Tower Hamlets "as the Market licence operator, did owe the claimant a duty as an ordinary reasonable user of the adjacent footpath a duty to take reasonable care either: (a) to prevent creation of obstructions on the footpath as a result of the operations of the Market and / or (b) to detect and carry out the prompt removal of any such obstructions." [J48]

44. At [J105] the DDJ turned to and summarised Ms Sintes' case on public nuisance [J105-122] and negligence [J123-139]. He then summarised Tower Hamlets' case on whether a duty was owed [J140-155], following that with a section entitled "Further Discussion" in which he addressed a number of authorities, remarking in the course of doing so that, in his judgment, he was not precluded from finding that there was a duty of care owed by Tower Hamlets in the present case by anything said in *Gorringe v Calderdale MBC* [2004] 1 WLR 1057 or *Stovin v Wise* [1996] AC 923.

45. The DDJ then set out his "Decision on duty of care" at [J169-190]. In his judgment, the Standard Conditions

> "clearly outline a situation in which [Tower Hamlets] assumed responsibility for the existence of the market and the rules (licence conditions) within which the Market Traders operate. Those licence conditions … clearly envisage a high degree of control of Market Traders. They are coupled with sanctions. A Market Trader is unable to bring their stall to the market without complying with those conditions, submitting to the sanctions regime and paying the requisite licence fee." [J169]

46. In addition, he relied upon: (a) the SOPP which "envisage a vigilance on the part of the defendant and encompass the very behaviour which led to the presence of the scaffolding poles in this case." [J170]; (b) the comments in the WMAP and the observations in the levelling-up application [J171]; and (c) the evidence of Tower Hamlets' witnesses which, he said, clearly recognised "the very problem that led to the accident."

47. On this evidential basis he concluded that the way the market operated "was squarely the responsibility of [Tower Hamlets]". Tower Hamlets was, he found, in control of the market [J173]. As such, he found that Tower Hamlets was in a situation as envisaged in *Dorset Yacht v Home Office* [1970] AC 1004, and of the local education authority in *Phelps v Hillingdon BC* [2001] 2 AC 619 and of the local authority in *Barrett v Enfield LBC* [2001] 2 AC 550 [J174].

48. The DDJ found that Tower Hamlets was responsible for the licensing, management and control of the Market and bore responsibility for waste abandoned in the Market Area. At [J177] he also found that Tower Hamlets:

    i) "Was responsible for ensuring that the Market was managed and run in such a way that did not create a public nuisance on the adjacent footpath"; and/or

    ii) "Owed the claimant, as an ordinary and reasonable user of the adjacent highway, a duty of care not to run or allow the market to be run in such a way as to create a hazard on the adjacent footpath."

49. The DDJ then, having referred to the Standard Conditions and the SSOP having each referred specifically to the requirement for Market Traders not to leave hazards in and around the stalls, appears to have elided the torts of negligence and nuisance in his final paragraph in the section [J179]:

> "Further, I find that the fact that the poles and the trolley were indeed left in a gap between two of the stalls in violation of the licence condition at §13.5 … that makes specific reference to the possibility of their being a "nuisance", the fact that the trolley / poles so left would be a trip hazard, and that they emanated from the market area over which the defendant had control is indicative of the duty of care owed to the public at large, and hence to the claimant, in the tort of public nuisance."

50. The DDJ's next sub-section was entitled "Poles/scaffolding a public nuisance". With respect, this passage is confusing and I do not set it out in detail here. In essence, the DDJ based his conclusion that the poles and trolley were a public nuisance "for which [Tower Hamlets] owed [Ms Sintes] a duty of care" because he accepted her analysis that Tower Hamlets, "as the entity responsible for the licensing and management of a market is liable for nuisances created on land adjacent to the market area as well as within the market area: [J180.3]. The presence of the poles and trolley created an obstruction that gave rise to a foreseeable risk of injury and therefore constituted a public nuisance on the highway which was "related to and caused by the operation of [the Market] by [Tower Hamlets]." Tower Hamlets was or should reasonably have been aware of the presence of this public nuisance on the highway, "given the vigilant inspection requirements of the SOPP … and the presence of [Tower Hamlets'] Market

Officers on the day of the accident." [J182-183]. The DDJ then found that Tower Hamlets had sufficient time from 2.45 pm that afternoon to abate the nuisance but failed to do so either by removing the poles or erecting a warning notice. "Therefore [Tower Hamlets] was responsible for permitting the Market to be run in such a way as would create a public nuisance on the highway." [J186]. He went on to hold that "by failing to abate a nuisance over which [it] had sufficient control and of which [it] was aware and had the power to abate, [Tower Hamlets] essentially adopted that nuisance." [J189].

51. The DDJ then addressed "Duty – negligence". He held that the presence of the poles gave rise to a foreseeable risk of injury and that "The relationship between the claimant (as someone who had alighted a bus within meters of the unattended poles / trolley between two market stalls) and [Tower Hamlets] (the entity which had assumed responsibility for, and exercised considerable control over the Market Traders and their stalls) was sufficiently proximate so as to lead to the imposition of a duty of care." He then carried out a brief analysis of whether it was fair just and reasonable for Tower Hamlets to owe Ms Sintes a "common-law duty in negligence to ensure that the site at this busy market was safe, that the [Standard Conditions] … were adhered to by Market Traders and that it vigilantly and diligently abided by its own inspection policy as set out in the SOPP". He concluded that it was.

52. That ended the first main section of the Judgment entitled "Did the Defendant owe the Claimant a Duty of Care".

53. The next main section was entitled "Were the scaffolding poles a nuisance or a danger?" [J200]. It will be noted from the summary I have just provided that the DDJ had already concluded that they were: see [49] and [50] above. In this second main section he set out exhaustively the witness evidence on the issue, as well as referring again to the Standard Conditions, the SOPP, the WMAP and the "Levelling-up" application and concluded that "it is very clear that the poles were both a nuisance and a danger."

54. The third main section was entitled "Breach of Duty" [J253]. It commenced with the DDJ reiterating that "the trolley and scaffolding poles would not have been present but for [Tower Hamlets'] licensing of the Market" and that "The trolley and scaffolding poles over which the claimant tripped were an obstruction of the footpath that constituted a public nuisance, which was created as a result of the manner in which the defendant permitted the market to be run."

55. The first sub-section of this main section was entitled "When the scaffolding poles/trolley first appeared at the accident location." As I shall explain below, the DDJ's finding of fact on this issue is the subject of a specific challenge. I therefore address this sub-section in detail.

56. The DDJ's first observation was that he had "insufficient evidence to determine *precisely* when the trolley and scaffolding poles appeared at the location of the accident." [J257]. That said, the DDJ listed the factors that he took into account, including: (a) the SOPP providing for the late officer to be on shift from 2.45 pm to 6.00 pm; (b) Mr Patchell's evidence that, although he had been present until 3.00 pm on the day he had not witnessed the obstruction that led to the accident; (c) his finding that Mr Patchell, who occupied a reasonably high managerial position, was first asked to provide a statement some 3 ½ years after the incident; (d) his finding that Mr Serdouk would not have been carrying out inspections after 2.45 pm; (e) the evidence that there

was no late shift officer there on the day in question; (f) he placed no significant weight on Mr Patchell saying in his witness statement that it was "most unlikely that the rig as can be seen in the photographs had been there for any length of time."; (g) although other Tower Hamlets personnel were present for a multi-agency operation, the focus of that operation was not on abandoned or hazardous market equipment but on countering serious crime, immigration issues and anti-social behaviour; (h) Mr Uddin's evidence was that some traders leave early, depending on the weather; and (i) Mr Patchell accepted in cross-examination when shown photographs that the poles had been there for "some time" though he was unable to specify whether that meant hours or days.

57. The DDJ had earlier reviewed the evidence provided by a witness statement from an adjacent stallholder, Ms Hadaddi, which the DDJ admitted as evidence [J218]. Ms Hadaddi said in her statement that the trolley and bars had been abandoned "for some time". The DDJ was conscious that her statement was produced for the purpose of responding to a suggestion that she was the party responsible for leaving the trolley and poles in position and that therefore he must be cautious about taking her assertions at face value [J233]. And, given that she did not attend court he said that he could only give "very limited weight" to her statement [J234]. When considering when the poles first appeared at the accident location, he said he put "little weight" on Ms Hadaddi's evidence [J257.6]. In the next subsection ("Frequency of defendant's duty to inspect") he said he did not rely on her evidence, to which he did not accord significant weight, given the circumstances in which it was produced [J263]. Perhaps most significantly, the DDJ did not include Ms Hadaddi's evidence in the list of factors that he had taken into account when considering when the trolley and poles appeared at the location of the accident: see [56] above; nor did he rely on her evidence when explaining his conclusion on how long the poles had been present: see below.

58. The DDJ expressed his conclusion quite shortly at [J258-259]:

> "258. In reaching a conclusion as to when the scaffolding poles / trolley were in place at the location of the accident, I have taken into account all of the evidence, … . Mr Uddin's statement that traders left early, coupled with the absence of an inspection from 14:45 onwards led me to conclude, on the balance of probabilities, that the scaffolding poles and the trolley had been at the locus of the accident from at least the start of the late shift – i.e. from 14:45 that day.
>
> 259. Although this does not affect my decision as to breach of duty, I do consider it highly likely:-
>
> 259.1. given that the scaffolding poles / trolley were in a gap between two market stalls, and hence not obstructing the stall areas; and
>
> 259.2. given that the scaffolding poles were adjacent to a bin and hence may have been regarded as rubbish;

> that they had been there much longer, but it is not necessary for the court to reach that conclusion in order to find that there was a breach of duty / causation of the accident by the defendant."

59. The next subsection was headed "Frequency of defendant's duty to inspect". The DDJ held that Tower Hamlets "by licensing the Whitechapel Road Market, should in my judgment have taken reasonable steps to ensure that it, and the area around it, was safe." He concluded that the best evidence of a reasonably safe way to run the Market was encapsulated in the SOPP. He adopted the three time periods (11.15-12.30; 12.45-2.15; 2.45-6.00) and held that Tower Hamlets "should have ensured that there were no obstructions in and around the market (including in the area between the two stalls where [Ms Sintes] was injured) once in each of those time periods, but not as frequently as hourly." [J268]. He then found that there was no inspection for obstructions and the other matters required of the late officer from at least 2.45 pm (if not earlier) to the time of the accident (c. 5.00 pm) and that this was in breach of the guidance that Tower Hamlets had given itself for the safe operation of the market [J272].

60. The third and final subsection was headed "Conclusion on breach of duty of care". It attempts to draw together the strands of the DDJ's reasoning as follows:

> "277. Given that the Clamant tripped on the scaffolding poles / trolley at or around 5.00 pm and that the poles had been there, and a trip hazard, for at least two hours, the SOPP 2017 were not being adhered to properly and there was a failure properly to supervise and monitor the market so as to ensure that it was run safely. This created a hazardous obstruction on the footpath.
>
> 278. There was also a failure to conduct adequate and sufficient inspections, a failure to carry out the necessary vigilant monitoring and a failure to keep the social spaces adjacent to the market obstruction-free.
>
> 279. As such, the defendant was permitting the market to be run in such a way as to create a public nuisance on the adjacent footpath (in a manner analogous to the defendant in *Diboll v. City of Newcastle-Upon-Tyne and others*…).
>
> 280. Further the defendant failed to detect and remove the obstruction (the scaffolding poles on the trolley) due to its failure to comply with SOPP 2017 and its failure properly to supervise and monitor the market.
>
> 281. Therefore, in my judgment, by suffering or permitting the components of a market stall to be left in such a way as to pose a hazard to ordinary reasonable users of the footpath, the defendant failed in the duty of care that it owed to the claimant, … ."

61. The last two issues addressed by the DDJ were Causation and Contributory Negligence. He found causation to be established and rejected the allegations of contributory negligence. There is no need to say more about either finding here.

Grounds of Appeal/submissions.

62. The DDJ gave permission to Tower Hamlets to advance four grounds of appeal:

Ground 1: the DDJ was wrong to identify and impose any duty of care on D in respect of the poles left on the highway by the third-party market trader:

(a) The DDJ was wrong to find that D's regulatory control of the market traders was sufficient to impose a duty of care.

(b) The DDJ was wrong to find that D had assumed a responsibility to C.

(c) The DDJ was wrong to find that D was legally able to continue the nuisance created by the third-party market trader.

(d) The DDJ was wrong to impose a novel duty of care.

Ground 2: the DDJ was wrong to find that the poles had been left on the highway since 14:45.

Ground 3: even if the DDJ was right to find a duty, he was wrong to find that D should have ensured that there were no obstructions in and around the market once in each of the time periods.

Ground 4: even if the DDJ was right to find a duty, he was wrong to find that D was in causative breach of duty on the standard of care that he set.

Ground 1: Duty of Care

63. It is not necessary to retrace the steps by which Courts of the highest authority have addressed the question whether and when a public authority acting in pursuance of a statutory power may owe a duty of care to a claimant. For present purposes it is sufficient to adopt the statements of general principle as set out by Lord Leggatt and Lord Burrows JJSC (with whom Lord Hodge DPSC, Lord Briggs and Lady Simler JJSC agreed) in *Tindall v Chief Constable of Thames Valley Police* [2024] UKSC 33, [2025] AC 1046, starting at [1]:

> "As a general rule, a person has no common law duty to protect another person from harm or to take care to do so: liability can generally arise only if a person acts in a way which makes another worse off as a result. In recent years this distinction has taken on added significance because it is now firmly established (or re-established) that the liability of public authorities in the tort of negligence to pay compensation is governed by the same principles that apply to private individuals. Many public authorities - notably, protective and rescue services such as the police force and fire brigade – have statutory powers and duties to protect the public from harm. But failure to do so, however blameworthy, does not make the authority liable in the tort of negligence to pay compensation to an injured person unless, applying the same principles, a private individual would have been so liable. That means that to recover such compensation a

> claimant generally needs to show that the public authority did not just fail to protect the claimant from harm but actually caused harm to the claimant."

64. Lord Toulson JSC explained the underpinning for the general rule in *Michael v Chief Constable of South Wales Police* [2015] AC 1732 at [97]:

> "The fundamental reason . . . is that the common law does not generally impose liability for pure omissions. 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."

65. As a helpful summary of the exceptions to the general rule that there is no duty of care to protect a person from harm, the Supreme Court has twice adopted the formulation proposed by Tofaris and Steel in "Negligence Liability for Omissions and the Police" [2016] CLJ 128:

> "In the tort of negligence, a person A is not under a duty to take care to prevent harm occurring to person B through a source of danger not created by A unless (i) A has assumed a responsibility to protect B from that danger, (ii) A has done something which prevents another from protecting B from that danger, (iii) A has a special level of control over that source of danger, or (iv) A's status creates an obligation to protect B from that danger.": see *Tindall* at [42].

I note in passing that in the present appeal it is submitted that Tower Hamlets may fall within the first and/or third of Tofaris and Steel's exceptions.

66. The Supreme Court in *Tindall* provided a summary of the applicable principles at [44]:

> "(i) There is a fundamental distinction, drawn in all the above cases, between making matters worse, where the finding of a duty of care is commonplace and straightforward, and failing to confer a benefit (including failing to protect a person from harm), where there is generally no duty of care owed.
>
> (ii) An example of the former (making matters worse), where there was held to be a duty of care owed by the police, is *Robinson* [2018] AC 736. As regards other emergency services, a more difficult example is the Hampshire case in *Capital & Counties* [1997] QB 1004 (turning off the sprinkler system). All the other cases mentioned fell on the other side of the line.
>
> (iii) A difficulty in drawing the distinction (between making matters worse and failing to protect from harm) is how to identify the baseline relative to which one judges whether the defendant has made matters worse: … . The cases show that the relevant comparison is with what would have happened if the defendant had done nothing at all and had never embarked on the

> activity which has given rise to the claim. The starting point is that the defendant generally owes no common law duty of care to undertake an activity which may result in benefit to another person. So it is only if carrying out the activity makes another person worse off than if the activity had not been undertaken that liability can arise.
>
> (iv) Another way of stating the general rule is to say that a person owes a duty to take care not to expose others to unreasonable and reasonably foreseeable risks of physical harm created by that person's own conduct. By contrast, no duty of care is in general owed to protect others from risks of physical harm which arise independently of the defendant's conduct - whether from natural causes (as in *East Suffolk* [1941] AC 74) or third parties (as in *Michael* [2015] AC 1732 and *Ancell* [1993] 4 All ER 355).
>
> (v) Although not made out in any of the above six cases, there are exceptions to the general rule that there is no duty of care to protect a person from harm, for example, where the defendant has assumed a responsibility to do so or has control of a third party."

67. The principle in (iii) above that the baseline is what would have happened if the defendant had done nothing at all is firmly established by authority going back to *East Suffolk* per Viscount Simon LC at 84-85 and Lord Porter at 105. Equally, the fact that a defendant has acted in the past in a way that would or might, if repeated, have prevented damage does not deflect the Court from the general principle. In *Gorringe*, the Highway Authority had in the past painted a "slow" sign on the road but did not refresh it when it faded to oblivion. The House of Lords rejected an argument that, because it had painted a "slow" sign in the past, it was under a duty to do so again. Lord Rodger said at [88]:

> "When that happened, the situation returned to what it had been before the defendants decided to exercise their statutory powers by painting it in the first place. They were not under any common law duty to exercise their power to repaint it and are not liable because, for whatever reason, they did not do so."

68. The fact that a defendant authority can be shown to have acted in dereliction of a public law duty does not mean or imply that they have acted in breach of a private law duty of care owed to another person. This applies to cases where the claim is in respect of damage directly caused by a third party for whose behaviour the defendant is not responsible: see *Michael* at [114] per Lord Toulson JSC.

69. Subject to the two possible exceptions, which I consider separately below, it is plain that this case falls within the general rule. It is established and accepted that Ms Sintes' accident was caused by the tortious actions of an unidentified street trader who left the poles in a dangerous position in breach of the terms of their licence and the private law duty of care that they undoubtedly owed to Ms Sintes when she chose to walk along that part of the highway.

70. Under the statutory scheme of the 1990 Act, it would have been unlawful for the third-party tortfeasor to have engaged in street trading at the Market at all without the authorisation of a licence: section 23(1). Tower Hamlets were the licensing authority for the Market pursuant to the statute and their issuing of licences was governed by the statute and the standard conditions that were in place. There is no suggestion that the standard conditions were inadequate; on the contrary, had they been complied with the street trader would not have created the danger that caused Ms Sintes' accident. Doubtless for that reason, Mr Coffey accepted that, had Tower Hamlets issued the licence and then done nothing more, the issuing of the licence would not have been sufficient to give rise to a private law duty of care owed to Ms Sintes.

71. What is being complained of, however expressed, is a failure to confer a benefit upon Ms Sintes by doing more to prevent harm caused by the (unidentified) street trader who left the poles and trolley in a place where they were obstructing the highway. Any residual doubt about that is dispelled when it is remembered that the relevant baseline is what would have happened if Tower Hamlets had done nothing at all. If that had been the case, there would have been nothing to prevent the unidentified trader from leaving the poles where they did; and no reason to think that they would not have acted as they did.

72. The DDJ placed considerable reliance upon the terms of the SOPP. In my judgment he was wrong to do so. The existence of the SOPP does not affect the reasoning I have just set out. Put another way, the decision in *East Suffolk* would have been the same whether the Council had had a manual telling them how to respond to flooding or had none. What determined the outcome in *East* Suffolk was not that they failed to live up to the standards they set themselves - or even that they failed to meet the standards of a reasonable authority; it was that their incompetence did not add to the damage suffered by the Claimant. So here, the fundamental question is whether Tower Hamlets made things worse by their failure to act differently: it is not whether they complied with the terms of the SOPP. In my judgment there is only one possible answer to that fundamental question.

73. I turn therefore to consider the possible exceptions to the general rule. First, did Tower Hamlets assume a responsibility to protect Ms Sintes from the harm that she suffered when she fell? I accept at once that it is possible, at least in theory, that an assumption of responsibility can arise out of performance of statutory functions: see *N v Poole BC* [2020] AC 780 at [72] per Lord Reed DPSC.

74. The leading authorities on the issue of assumption of responsibility were reviewed by Lord Reed in *Poole*. It is a concept that has arisen in widely differing circumstances having in common only the question whether the putative tort-feasor had assumed responsibility to confer a benefit on the claimant. In some cases (e.g. *Phelps* and *Barrett)* an assumption of responsibility was found as a consequence of the functions being undertaken, such as taking over or discharging parental responsibility. In others, of which *Poole* is an example, assumption of responsibility has been held to be absent despite close and detailed involvement. In *Poole* the two child claimants and their mother were placed by the defendant housing authority in a property owned by a third party. They were subjected to significant harassment and abuse by a neighbouring family that had been known to the defendant as engaging persistently in anti-social behaviour. The claimants made a claim for physical and psychological damage, alleging that the defendant should either have moved the family as a whole or moved

the children out of the home. The Supreme Court held that the council's investigating and monitoring of the claimants' position did not involve the provision of a service to them on which they or their mother could be expected to rely. It may have been reasonably foreseeable that their mother would be anxious that the council should act so as to protect the family from their neighbours "but anxiety does not amount to reliance": see [81].

75. Yet it is not clear that actual reliance is always necessary. In *Tindall* at [75]-[76], Lords Leggatt and Burrows said:

> "75 While somewhat elusive - and possibly having different requirements in different contexts (e g pure economic loss and misrepresentations) – for present purposes an assumption of responsibility involves the idea that a person may, by words or conduct, expressly or impliedly promise (or undertake or give an assurance) to take care to protect another person from harm. In some situations, but not all (for an exception, see *HXA v Surrey County Council* [2024] 1WLR 335, para 108), it is also a necessary element that the claimant has relied on this promise. An example is provided by *Kent v Griffiths* [2001] QB 36, where the call handler for the London Ambulance Service gave assurances that an ambulance would attend with reasonable speed. By contrast, in *Michael* [2015] AC 1732 it was found that the police call handler had made no such promise. The principle of assumption of responsibility can also be invoked to explain the duty of care that arises when a person voluntarily accepts a specific role or enters into a special relationship with another person which carries with it recognised responsibilities to protect the other person's welfare. A classic example is the relationship between a professional person and his or her client or patient.
>
> 76 The basic stumbling-block for any argument based on assumption of responsibility in this case is the complete absence of any communication or interaction between the police officers who attended the scene of Mr Kendall's accident and Mr Tindall. The police officers did not say or do anything of which Mr Tindall (or other motorists who drove along the relevant section of road after the police had left) were aware, or on which they could have relied. We find it impossible to see in these circumstances how an assumption of responsibility could be said to arise."

76. In the present case there was nothing approaching a relationship such as that in *Phelps* or *Barrett*. Nor is there any meaningful sense in which it can be said that Tower Hamlets "assumed responsibility" for the safety of Ms Sintes as she walked along the highway in the Market Area. In my judgment, this case falls on the same side of the line as *Poole* and *Tindall* and does not satisfy the "assumption of responsibility" exception.

77. Second, did Tower Hamlets have a special level of control over the errant market trader such as to qualify as an exception to the general rule. In my judgment it did not. The

classic case of special control is *Dorset Yacht,* which is not comparable. It is not comparable because the level of control was quite different. Although the borstal boys were meant to be given a measure of freedom in their training, they were known offenders from a borstal institution who were meant to be under the close supervision of the officers to prevent them from escaping. By contrast, the only "control" that Tower Hamlets had over the market traders was the powers of revocation and enforcement in the event of failure to comply with their licence conditions. Even on the most expansive interpretation of the SOPP, it could not sensibly be interpreted as a blueprint for guaranteeing by supervision and oversight that no trader ever breached their licence conditions or caused a danger to pedestrians in the area.

78. For these reasons I consider that this case falls within the general rule. What is complained of is a failure to confer a benefit on Ms Sintes, in respect of which Tower Hamlets owed her no common law duty of care. It follows that her claim in negligence should have been dismissed.

79. I would allow the appeal on Ground 1. I deal with nuisance separately below: see [101].

Ground 2: challenge to the finding that the poles were in their accident position from 2.45 pm

80. I have set out the DDJ's approach and the factors on which he did (and did not) rely at [56]-[58] above. It will be remembered that, having at [J257] listed the factors that he had taken into account, he set out at [J258] the reasons that led him to conclude that the poles and trolley had been in their accident position from at least the start of the late shift i.e. from 2.45 pm that day. Tower Hamlets challenges that finding of fact.

81. The principles to be applied by an appellate court when there is a challenge to a finding of fact are well established. Lewison LJ provided a useful summary of those principles in *Volpi v Volpi* [2022] EWCA Civ 464 at [2]:

> "(i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
>
> (ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
>
> (iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.
>
> (iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a

> balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.
>
> (v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
>
> (vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

82. No further examination or amplification of the applicable principles is necessary. I bear them in mind at all times. They set the bar high.

83. In the present case, we know what evidence the DDJ took into consideration because he told us at [J257] and [J258]. Tower Hamlets does not mount its challenge on the basis of an alleged mis-allocation of weight; rather, its case is that there was no evidence upon which the DDJ could properly have reached his conclusion and made his finding.

84. I start with [J258], which is where the DDJ identified the factors that led him to his conclusion. The first factor was Mr Uddin's statement that traders left early. That says nothing about if and when the trader responsible for the poles left on that day. Market trading formally ended at 6.00 pm, so leaving any time before then could be described as leaving early. Mr Uddin's statement is equally consistent with the responsible market trader having left the poles at any time before the accident happened. It is not evidence that the poles were there at any specific time and it is a non-sequitur to rely upon Mr Uddin's statement as evidence that the poles were in their accident position at 2.45 pm that afternoon.

85. The second factor relied upon by the DDJ was that there was no inspection on the day *after* 2.45 pm. Once again, to rely upon this fact as evidence that the poles were in position *at* (or before) 2.45 pm is a non-sequitur. To the contrary, if the last inspection was at 2.45 pm, that is evidence that may tend to show that the poles were *not* there at that time. I note in passing that it was the evidence of Mr Patchell and Mr Uddin (upon which Ms Sintes relied in support of her case on duty of care and the DDJ appears to have accepted without qualification) that if the poles had been seen on inspection, something would (at least normally) have been done about them: see [J46.6], [J82-93].

86. In my judgment, for these reasons, no judge could reasonably have reached the DDJ's conclusion on the basis that he did. His reasoning in [J285] involves insurmountable non-sequiturs and his conclusion as stated is plainly wrong.

87. For completeness it is necessary to review the other factors listed by the DDJ as factors that he took into account:

    i) The provision in the SOPP for the late officer to be on shift from 2.45 – 6.00 pm provides no evidence about when the poles were deposited in their accident

position, not least because the DDJ found as a fact that there was no late officer on duty that day;

ii) Mr Patchell's evidence that he had not seen the poles and that it was most unlikely that the rig had been there for any length of time, if accepted, would have tended to support a finding that that the poles were not there while he was on duty. The weight to be attached to his evidence was limited for the reasons the DDJ gave. His evidence did not support a finding that the poles were in position at 2.45 pm;

iii) The finding that Mr Serdouk would not have been carrying out inspections after 2.45 pm does not support a finding that the poles were in position at 2.45 pm;

iv) The finding that other Tower Hamlets personnel were on site for reasons other than carrying out inspections provides no support for a finding that the poles were in position at 2.45 pm.

88. That leaves:

i) The evidence of Ms Hadaddi that the poles had been there "for some time". This evidence was entirely vague and, even if accepted, could not support a finding that the poles had been there from 2.45 pm or from any particular time. In any event, it does not appear that the DDJ afforded her evidence any weight on this point: she was not mentioned in [J285] and, in general, was clearly regarded as a witness whose evidence (for good reason) the DDJ approached with considerable caution: see [57] above;

ii) The evidence of Mr Patchell in cross-examination when he is recorded as having accepted that the photographs showed that the poles had been there "for some time." That evidence was further qualified because he said he was unable to say whether he was talking about hours or days. Once again, this is entirely vague and could not support a finding that the poles had been there since 2.45 pm. The DDJ appears to have recognised the flakiness of this evidence because he did not rely upon it in [J285]. Having reviewed the photographs, had he relied upon Mr Patchell's evidence on this point, I would have questioned whether it was of any value at all. The various photographs show the general scene after the accident including the poles; but there is nothing about the disposition of the poles or trolley that demonstrates when they were put there, either in real time or in comparison to the other items (including at least one large plastic sack of general rubbish and some bits of cardboard) clustered around and near to the rubbish bin close to which Ms Sintes fell.

89. I remind myself of the principles to be applied. I also bear in mind not merely the matters to which the DDJ referred at [J257-258] but the various findings of relevant primary fact made in the course of the judgment. Having done so I am in no doubt that the DDJ's finding of fact was plainly wrong. In my judgment there was no evidence that could justify the DDJ in finding that the poles and trolley had been in their accident position since 2.45 pm or any precise time. The evidence was consistent with the poles having been there for an indeterminate period; but that period could have been one of a few minutes. It was not merely a case where, as the DDJ said, he had insufficient

evidence to determine *precisely* when the trolley and poles appeared; rather it was a case in which no material finding of the duration of the period could be made.

90. I would allow the appeal on Ground 2.

Ground 3: inspection time periods

91. I have summarised the DDJ's findings on the frequency of inspection time periods at [59] above.

92. In the light of my conclusion that Tower Hamlets did not owe Ms Sintes a duty of care, it is not necessary to decide this Ground. I will therefore deal with it briefly. On Ground 3 Tower Hamlets submitted that section 35(1) of the 1990 Act meant that they were only lawfully entitled to remove the poles if the market trader had not moved them by the time of market closure i.e. from 6.00 pm. A determination that Tower Hamlets was obliged to inspect (and by implication to move offending obstructions) *by* 6.00 pm was therefore inconsistent with the statutory power to remove them *at and after* that time.

93. Assuming that a private law duty was owed, there are two answers to this submission.

94. First, I do not accept the interpretation of section 35(1) which is the premise for the submission: see [19]-[20] above. Second, it was the evidence of Tower Hamlets' officers that if ever they found a danger such as arose in the present case, they would take steps to attend to it, including by arranging for it to be removed and placed in storage, with the equipment only being returned to a market trader when they came forward following payment of a fixed penalty fine: see [J85]. The provisions of Standard Licence and the SOPP are consistent with this power of enforcement: see, for example, Conditions 3.13 and 17.2, which are set out at [25] and [31] above.

95. I would dismiss the appeal on Ground 3.

Ground 4: breach and causation

96. I have summarised the DDJ's approach at [59]-[60] above. Having held that the poles were in position from 2.45 pm the DDJ held that the market should have been inspected to ensure there were no obstructions once in each of the time periods he had identified from the provisions of the SOPP. The relevant period was from 2.45 to 6.00 pm. Ms Sintes suffered her accident at about 5.00 pm. The DDJ held that this was in breach of the provisions of the SOPP and a failure (i.e. in breach of duty) to conduct adequate and sufficient inspections so that "by suffering or permitting the components of a market stall to be left in such a way as to pose a hazard to ordinary reasonable users of the footpath, [Tower Hamlets] failed in the duty of care that it owed to [Ms Sintes]".

97. Ground 4 rests on simple propositions:

    i) On the DDJ's findings, Tower Hamlets would not be in breach of duty unless it failed to inspect between 2.45 and 6.00 pm;

    ii) Therefore, Tower Hamlets was not in breach of duty at 5.00 pm when the accident happened;

iii) Tower Hamlets was first in breach at 6.00 pm when its time for inspection elapsed without an inspection having been carried out;

iv) Therefore, Tower Hamlets' breach of duty cannot have caused the accident because the accident happened an hour before breach occurred.

98. Ms Sintes challenges this analysis. She reverts to formulating Tower Hamlets' failure as (a) "permitting the Market to be run in such a way as to create a nuisance on the adjacent footpath", and (b) "permitting the components of the market stall to be left in such a way as to pose a hazard to ordinary reasonable users of the footpath". However, the first of these is so vague as almost to be meaningless. It is, in truth, a restatement of the case that Tower Hamlets failed to exercise its powers to confer a benefit on Ms Sintes, which fails for the reasons I have given under Ground 1. The second begs the question *how* did Tower Hamlets permit the components of the market stall to be left in their accident position? To which the answer is that they failed to remove them or to cause them to be removed as a result of inspecting the area. But this brings us back to the fundamental problem posed by Tower Hamlets' four propositions, to which Ms Sintes has no answer.

99. Her difficulty is compounded by the inability to identify when the poles were placed in their accident position. So, not only had their period for inspecting not expired at 5.00 pm, but it could not be shown that an inspection at any time materially before 5.00 pm would have revealed the presence of the poles. Therefore, assuming that Tower Hamlets owed Ms Sintes a private law duty of care to inspect the area once between 2.45 and 6.00 pm, Ms Sintes cannot prove that any breach of that duty caused her accident.

100. I would allow the appeal on Ground 4.

The Case on Nuisance

101. I have summarised the DDJ's approach to the issue of nuisance in his judgment at [48]-[50] above. He based his reasoning on his acceptance that Tower Hamlets was responsible for ensuring that the Market was managed and run in such a way that did not create a public nuisance on the adjacent footpath, that the poles and trolley constituted a public nuisance on the highway and that their presence was related to and caused by the operation of the Market by Tower Hamlets. It was a material part of his reasoning that Tower Hamlets should have been aware of their presence given the vigilant inspection obligations set out in the SOPP and that Tower Hamlets had sufficient time from 2.45 pm (when he found that the poles were present) to abate the nuisance but that they failed to do so. "Therefore" Tower Hamlets was responsible for permitting the Market to be run in such a way as would create a public nuisance on the highway. Either as part of this reasoning or in addition to it, he concluded that by failing to abate a nuisance over which it had sufficient control Tower Hamlets "essentially adopted the nuisance."

102. Tower Hamlets submits that this approach was not open to the DDJ because of the decision of this court in *Ali v Bradford MBC* [2010] EWCA Civ 1282. [2012] 1 WLR 161. That was a claim for personal injuries which was brought in nuisance against a highway authority after the claimant slipped and fell because of mud and debris on a pathway. The Court of Appeal was at pains to distinguish between (a) the relationship

between neighbouring private landowners compared with (b) the relationship between a highway authority and users of the highway. It was held that the highway authority is not the occupier of the highway and the highway authority owed no private law duty to users of the highway to keep it clear of obstructions. The decision was founded on an analysis of relevant provisions of the Highways Act 1980 that are directly referable to highway authorities. Tower Hamlets is not the highway authority for the relevant location. It has in common with a highway authority that it is not an occupier of the area where Ms Sintes fell.

103. I do not accept that *Ali* is the complete answer for which Tower Hamlets contends. In particular, if it were to be shown that a highway authority had itself placed an obstruction on the highway (or directly caused someone else to do so) I see nothing in *Ali* that would render the highway authority immune from an action based on its obstruction of the highway. At its highest, *Ali* decides that under the structure put in place by the 1980 Act a highway authority that has actual knowledge of a dangerous deposit on a public highway, or sufficient time has elapsed that it had the means of acquiring the knowledge by a system of inspection, is not to be regarded without more as having continued the nuisance and is not therefore liable under the principle established in *Sedleigh-Denfield v O'Callaghan* [1940] AC 880 to a person who suffers a slipping accident. Toulson LJ was at pains to stress at [39] that the court was not concerned with a nuisance that was created by the highway authority.

104. Ms Sintes relies on three authorities in support of the existence of a cause of action in nuisance.

105. In *Diboll v City of Newcastle Upon Tyne* [1993] PIQR P16, the claimant was a passenger in a vehicle driven by the employee of the first defendant (Newcastle) when he was struck and seriously injured by a scaffolding pole which was part of the framework of a market stall that projected into the highway. Newcastle was the employer of the driver and, as the local authority, had overall control of the market area. The second defendant was an independent contractor who had erected the scaffolding. The third defendant was the market trader who used the stall.

106. There is very little information about the control available to or exercised by Newcastle over the market area. In the course of his judgment Russell LJ (with whom Woolf and Lloyd LJJ agreed) said:

> "Here the second defendant was an independent contractor, as was the third defendant. The relationship with the local authority was that the Newcastle-upon-Tyne Council had the overall responsibility for this market, and through their supervising officers, a measure of control of it, but no more."

107. The Court of Appeal accepted the submission that Newcastle were liable in nuisance to the claimant on the basis that they were "the Market Authority and managers, who permitted the market to be run in the way it was insofar as it constituted nuisance." The nuisance in question was the dangerous projection of the scaffolding pole into the highway. There is no analysis of the basis or source of Newcastle's "overall responsibility" for the market; nor is there any analysis or exposition of the state of Newcastle's knowledge about the dangerous projection of the scaffold pole into the highway or any further analysis of the basis for the imposition of liability in nuisance

upon Newcastle. I would accept that the decision supports the proposition that an authority such as Newcastle in *Diboll*, or Tower Hamlets in the present case, may be held liable in nuisance if adjudged responsible for a dangerous state of affairs. I would not accept that it is authority for the proposition that a licensing authority such as Tower Hamlets is necessarily to be held responsible for a nuisance created by a third party simply because it has a supervisory or enforcement role pursuant to a statutory scheme such as that created by the 1990 Act.

108. In *Lippiatt v South Gloucestershire Council* [2000] QB 51, the defendant owned a strip of land occupied by travellers who for a period of years had trespassed onto the claimant's farm causing damage. The judge at first instance struck out the claim on the basis that the travellers' activities fell outside the scope of the tort of nuisance. The farmers' appeal succeeded, the Court of Appeal holding it to be arguable that an owner-occupier of land could be liable in nuisance for the unlawful activities of his licensees or persons based on his land which took place off his land, where such nuisance consisted of repeated acts committed on the victim's land, to the owner-occupier's knowledge. In the course of giving the lead judgment, Evans LJ said:

> "It may be that the correct analysis, where it is alleged that the owner/occupier of the land is liable for the activities of his licensees, is that he is liable, if at all, for a nuisance which he himself has created by allowing the troublemakers to occupy his land and to use it as a base for causing unlawful disturbance to his neighbours. … If that is correct, then strictly the question whether the owner/occupier has "adopted" a nuisance created by the travellers may not arise."

109. The facts of *Lippiatt* are far removed from the present case. Tower Hamlets are neither owners nor occupiers of the Market area; the placing of the poles in their accident position is not obviously similar to an emanation of destructive people from one person's land to another's; and the repeated acts of the destructive people are not obviously similar to this particular market trader having placed the poles and trolley in their accident position even if it was a recognised "challenge" that not all market traders always complied with their licence conditions. To my mind, *Lippiatt* does not materially affect or influence the present appeal.

110. The third authority relied on by Ms Sintes is *LE Jones (Insurance Brokers) Ltd v Portsmouth City Council* [2002] EWCA Civ 1723, [2003] 1 WLR 427. The defendant council acted as agent for the relevant highway authority having agreed to carry out the maintenance of trees on the highway. The council allowed the trees to grow to such a height that their roots encroached onto the claimant's property, desiccating the underlying soil and causing subsidence and damage to the property. The Court of Appeal upheld the judge's decision in favour of the claimant on the basis that the degree of control exercised by the council over the trees was sufficient to fix it with liability for the nuisance; and the fact that the council owed a contractual duty to the highway authority did not mean that it owed no duties in tort to anyone else.

111. In the present case it is not suggested that the poles were placed in their accident position by an employee of Tower Hamlets. To succeed in a claim in nuisance Ms Sintes must therefore show that either (a) Tower Hamlets was responsible for the market trader acting as they did in depositing the poles or (b) though not themselves

responsible for the initial placing of the poles, Tower Hamlets adopted or continued the nuisance for which the market trader was responsible.

112. The assertion in the Particulars of Claim and repeated by the DDJ that "the trolley and scaffolding poles over which the claimant tripped were an obstruction of the footpath that constituted a public nuisance, which was created as a result of the manner in which the defendant permitted the market to be run" or the DDJ's statement that Tower Hamlets "[permitted] the Market to be run in such a way as to create a nuisance on the adjacent footpath" needs to be considered further. It is accepted that the poles were placed in position by an independent third party (the market trader) and it is not suggested that Tower Hamlets directed them to place them where they did. Furthermore, the licence conditions imposed on the market trader by Tower Hamlets did not permit them to create the nuisance; rather, the licence conditions forbad the market trader to act as they did. In what sense, then, can it be said that Tower Hamlets "permitted" the Market to be run in such a way as to create a nuisance on the adjacent footpath? If it has any meaning at all it must imply that, in order not to "permit" the creation of the nuisance, Tower Hamlets could and should physically (or otherwise) have restrained the creation of this obstruction by the poles so as to guarantee that there could be no occasions of market traders creating a nuisance as happened. But, whatever the terms of the SOPP, this is wholly unrealistic for a borough council with limited resources whose Market Officers could not possibly marshal every aspect of every market trader's conduct. What is being contended for is effectively a guarantee that Tower Hamlets will prevent any breach of the market traders' licence conditions. There is in my judgment no conceivable justification for imposing such an unrealistic, unreasonable, and unenforceable obligation upon a borough council acting pursuant to its powers under the 1990 Act. The mere fact that the licence conditions, the SOPP, the WMAP and levelling-up application recognise that infractions of the licence conditions may occur on occasion does not mean or imply that they are permitted.

113. That leaves the suggestion that Tower Hamlets adopted or continued the nuisance. It is not necessary to embark on a detailed review of the law relating to adopting or continuing a nuisance because there are two prerequisites to a finding of adoption or continuation which cannot be satisfied in this case, namely knowledge and opportunity. It is not suggested that Tower Hamlets knew that the poles were in their accident position. At best, therefore, Ms Sintes must assert that Tower Hamlets should have known that they were there. But since it is not known how long they had been there, it cannot be asserted that Tower Hamlets ought to have known that they were. Equally, the inability to prove not merely when the poles were put in position but also for how long Tower Hamlets ought to have known of their presence is fatal to Ms Sintes' case that Tower Hamlets adopted or continued the nuisance on the highway. There was a suggestion that Tower Hamlets bore a reverse burden of proof and were obliged to show that they did not have a reasonable opportunity to abate the nuisance. That is to put the cart before the horse: the threshold question which must first be asked is how long the poles were in position. Ms Sintes is unable to answer that question.

114. For these reasons, the claim in nuisance fails.

Conclusion

115. I would allow the appeal, set aside the order of the DDJ entering judgment for Ms Sintes and direct that judgment be entered for Tower Hamlets.

Lady Justice Yip

116. I agree.

117. I would endorse the observation of Stuart-Smith LJ at paragraph 39 recognising the diligence with which the Deputy District Judge approached this case.

118. This was a multi-track case involving some legal complexity and was plainly one that was appropriate for trial by a Circuit Judge. While I recognise and acknowledge the pressures of work that exist in the County Court, this case perhaps highlights the need for careful scrutiny by Designated Civil Judges when making allocation decisions of this sort.

Lord Justice Bean (Vice President, Court of Appeal, Civil Division)

119. I agree that the appeal should be allowed for the reasons given by Stuart-Smith LJ. I also agree with the observations of Yip LJ about the allocation of multi-track trials of this level of legal complexity.