# Tindall v Chief Constable of Thames Valley Police
# [2024] UKSC 33

**Summary**

Just over 10 years ago, just before 6 am on 4 March 2014, two motorists – Carl Bird and Malcolm Tindall – died when Bird's car skidded on some black ice and collided with Tindall's car. The police had known about this patch of black ice because at 4.30 am, another motorist – Martin Kendall – had skidded on the same patch of black ice. Fortunately, Kendall survived this nasty accident: his car came to rest in a ditch by the side of the road. Injured, Kendall climbed out of his car and started waving to other cars to slow down so that they didn't suffer the same fate as he had (or worse). He then called the police and told them he had crashed his car as a result of there being ice all over the road.

Three police officers turned up virtually as soon as Kendall stopped talking to the police phone operator and Kendall told them what had happened. Kendall was then taken away in an ambulance to a nearby hospital. The police officers put out a 'Police Slow' sign while they cleared up the debris of Kendall's accident. They also called for a gritter to come and spread grit on the icy area, but did not attach any particular urgency to the request. At about 5.30 am, with the aftermath of Kendall's accident having been dealt with as best they could, the police officers left the scene, taking their 'Police Slow' sign with them – and leaving the patch of black ice unaddressed and unattended. Bird and Tindall's deadly collision happened shortly afterwards. The three police officers were all subject to disciplinary proceedings (having escaped prosecution for gross negligence manslaughter: the Independent Police Complaints Commission thought the officers had a case to answer but the Crown Prosecution Service declined to prosecute), with two of them being found guilty of misconduct and one gross misconduct.

The families and estates of Bird and Tindall sued the police, claiming that the police officers who attended the scene of Kendall's accident had owed motorists like Bird and Tindall a duty of care to deal with the danger posed by the black ice on which Kendall's car had skidded. The police applied to have the claims against them struck out on the basis that no such duty of care had been owed to Bird and Tindall. The police's application was unsuccessful at first instance: the first instance judge ruled that the claim should not be struck out but should proceed to a full trial as it was arguable that a duty of care had been owed either on the basis that the police officers had 'made things worse' for motorists like Bird and Tindall through the way they had conducted themselves at the scene of the accident or that they had 'assumed a responsibility' to motorists like Bird and Tindall to deal with the dangerous patch of black ice. On appeal, the Court of Appeal reversed the first instance decision, striking out the claims in *Tindall* on the basis that the established and alleged facts in the case did not bring it within any of the exceptions to the normal rule that a defendant will not owe a claimant a duty of care to save them from harm.

The claimants appealed to the UK Supreme Court, but their appeals were dismissed. Lord Burrows and Lord Leggatt gave the only judgment, with Lords Hodge and Briggs and Lady Simler agreeing. Lords Burrows and Leggatt held that the most promising basis for finding that a duty of care had been (arguably) owed in *Tindall* was the 'interference principle'. They adopted as 'a correct statement of English law' ([56] and [58]) the following formulation of the 'interference principle', set out in the 6th edition of McBride & Bagshaw, *Tort Law* (which is now set out on p 99 of the 7th (2024) edition):

> '[I]f A knows or ought to know that B is in need of help to avoid some harm, and A knows or ought to know that he has done something to put off or prevent someone else helping B, then A will owe B a duty to take reasonable steps to give B the help she needs.' (quoted at [50])

However, Lords Burrows and Leggatt held that the interference principle did not apply in this case as 'it is not enough to show that the defendant has acted in a way which had the effect of putting off or preventing someone else from helping the claimant. Rather…it is necessary to show that the defendant knew or ought to have known (i.e. that it was reasonably foreseeable) that its conduct would have this effect' ([58]). The facts of the case, as alleged by the claimants, did not establish that this requirement of reasonable foreseeability was made out: 'What is…critical [for application of the interference principle] is what the police knew or ought to have known about the role of Mr Kendall and what he would have done but for their arrival. As far as the police were concerned, Mr Kendall was someone who had been injured in an accident and no more than that. He was a victim, not a rescuer… There is nothing in any of [the] evidence which provides any support for a contention that the police knew or ought to have known that Mr Kendall had made or was intending to make attempts to alert other motorists to the ice hazard on the road' ([62], [63]).

None of the other purported bases for finding that the police officers in *Tindall* owed Bird and Tindall a positive duty of care to save them from harm were made out:

(1) *Assumption of responsibility*. '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 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]).

(2) *Control*. 'In so far as the police can be said to have taken control of the "scene" of the accident, the scene in question was where Mr Kendall's car was located. It is not alleged that the police did anything which could on any view be characterised as taking control of the patch of ice which represented the source of danger. On the contrary, one of the criticisms made of the police is precisely that they did nothing at all about that source of danger' ([83]).

(3) *Special status*. The UK Supreme Court's decision in *Michael* v *Chief Constable of South Wales Police* [2015] AC 1732 that the police occupy a special status that imposes on them positive duties of care to rescue others who are in danger of harm. The same court had not been invited in *Tindall* to depart from *Michael* and 'given the weight of that authority and the further body of authority since founded on it, this would not have been a realistic argument to advance' ([86]).

**Comments**

Taking up the last point, there is no sign from *Tindall* of the UK Supreme Court's retreating from the new orthodoxy on the scope of liability for omissions (especially for public bodies) established in *Michael* – and it is gratifying that the Court has found McBride & Bagshaw a good and reliable guide as to how that orthodoxy applies. Message to counsel for claimants in these kinds of cases: if you want to stop losing, work within the orthodoxy as set out in books like McBride & Bagshaw and stop trying to kick against it. Had the counsel for the claimants in this case been as quick as Lords Burrows and Leggatt to see that their best shot at establishing a duty of care was the interference principle, they would have also seen much earlier than they

seemed to do that the 'crucial question' on which the case would turn was 'whether the police could reasonably have foreseen that their attendance would displace attempts that Mr Kendall would otherwise have made to prevent road users from suffering harm' ([67]). As it was, counsel was reduced to making an application to the Court 'more than *six weeks* after the hearing of the appeal' ([89], emphasis added) for permission to make 'further submissions on the question whether there are reasonable grounds for alleging that Mr Kendall's warning efforts were reasonably foreseeable by the police' on the ground that 'this issue "was not covered by the [claimant] as fully during the hearing as it should have been"' (ibid). Unsurprisingly, the application was refused.

For the benefit of future claimants, the following couple of points about how the interference principle applies deserve to be emphasised:

(1) *Justification of the interference principle*. Lords Burrows and Leggatt justified the adoption of the interference principle as 'a correct statement of English law' on the basis that 'It follows…from first principles. It is simply a particular illustration or manifestation of the duty of care not to make matters worse by acting in a way that creates an unreasonable and reasonably foreseeable risk of physical injury to the claimant. There is no reason in principle why the conduct which creates this risk should not consist in acts which are foreseeably likely to have the effect of putting off or preventing someone else from taking steps to protect the claimant from harm' ([56]). This is incorrect.

If D acts *unreasonably* by putting T off, or preventing T, from saving C from injury, then there is no need to rely on the interference principle to establish that D owed C a duty of care. C can simply rely on good ole *Donoghue* v *Stevenson* [1932] AC 562 to argue that D owed C a duty to take care not to get in the way of T's saving C from being injured – provided, of course, that it was reasonably foreseeable to someone like D that their actions would result in someone like C's being injured. Where the interference principle comes into its own (and the same is true of the analogous 'creation of danger' principle) is where D acts *reasonably* by putting T off, or preventing T, from saving C from injury. In such a case, it is not possible to use *Donoghue* v *Stevenson* to argue that D owed C a duty of care not to get in the way of T's saving C. This is because there can be no liability in negligence for acting reasonably. Instead, it has to be argued that *because* D got in the way of T's saving C, D *then* had a duty of care to go to C's assistance himself (provided of course that D knew or ought to have known that D had done something to get in the way of T's saving C). But in such a case it is not possible to say that D has *created* 'an unreasonable and reasonably foreseeable risk of physical injury' to C. Whatever risk D might have exposed C to is not *unreasonable* because D did not act *unreasonably* in getting in the way of T's saving C from injury. But D still has a duty to do something about that risk because he has gotten in the way of T's doing something about it (so long, of course, as he can reasonably foresee that his actions have had that effect).

That the interference principle applies (and is only needed) in cases where D acts *reasonably* in getting in the way of T's saving C from injury is admitted by Lords Burrows and Leggatt at [61] where they say 'It is…not an answer to the claimant's case…that nothing done by the police before Mr Kendall left in the ambulance, or which may have contributed to his decision to leave, could reasonably have been described as negligent'. But then they ruin it all by going on to say 'To give rise to a duty of care, it would be sufficient that the activity of the police as a whole created a danger, i.e. that the activity of the police as a whole created an unreasonable and reasonably foreseeable risk of physical harm to the victim.' But this gets things twisted up the wrong way – one can only say that 'their activity as a whole' created 'an unreasonable and reasonably foreseeable risk of physical harm' to Bird and Tindall if you include in that activity their *inaction* after they saw Kendall off to hospital. But the police will have owed a duty of care to Bird and Tindall (if they owed them a duty at all) *before* they failed

to do anything to clear up the danger posed by the black ice on the road. What *generates* the police's duty of care cannot *include* their inaction after seeing Kendall off because the police are being sued *for that inaction* – it is that inaction that the claimants have to establish is wrongful (= in *breach* of a duty of care, not *establishing* a duty of care) in order to sue the police.

So it does not follow from *Donoghue* v *Stevenson* that the interference principle (or the analogous creation of danger principle) should be accepted 'as a correct statement of English law'. It has to be justified on its own two feet. Whether it can be so justified is not so clear – but it is clear from *Tindall* that it is now part of English law.

(2) *Emergency services*. *Tindall* also includes some important reflections on the scope of the interference principle, particularly in the discussion (and disapproval) of *OLL* v *Secretary of State for Transport* [1997] 3 All ER 897 at [57]. That was the case where the defendant coastguard got in the way of the Royal Navy rescuing a group of schoolchildren who were in trouble at sea by directing the Royal Navy helicopter to the wrong location to rescue the children. May J held that in assessing whether the defendant coastguard had owed the children a duty of care it was 'artificial' to distinguish between the coastguard and the Royal Navy – the two parts of the rescue effort had to be viewed as a whole and when the case was so viewed, there had been a simple failure to rescue the children quickly enough (which resulted in four of the children drowning) in circumstances that did not give rise to a duty of care to save those children from harm. Lords Burrows and Leggatt disapproved that reasoning and held that *OLL* was 'wrongly decided': 'It should have been held that the facts alleged fell within the interference principle'.

(Note that because the coastguard's misdirection was unreasonable, there was in fact no need to rely on the interference principle as such to establish that the coastguard owed the children a duty of care not to misdirect the Royal Navy. Such a duty of care could simply be established on the basis of *Donoghue* v *Stevenson*: the coastguard owed the children a duty to take care not to misdirect the Royal Navy because it was foreseeable doing so would result in the children drowning. The interference principle would only come into play if one wanted to argue that *having misdirected the Royal Navy*, the coastguard then had a duty of care to do something about that. No doubt they did – but that does not seem to have been the basis of the claim in *OLL*.)

Given the criticism of *OLL* in *Tindall*, we can also say that another (unreported) case – that was decided after *OLL* was wrongly decided. This was the dreadful case of Loraine Whiting, who was shot on March 10 1995 by her estranged ex-husband. Her ex-husband then turned his gun on himself and killed himself. Whiting managed to call 999 and the police and paramedics soon arrived at her house – at which point she had 98% chance of surviving with proper treatment. However, the police then refused to go into the house *and prevented the paramedics* from entering the house on the basis that although Whiting was on the phone giving the police repeated (30 in all) assurances that her ex-husband was dead, he might be very much alive and forcing her to lie to the police so that he could then shoot or take hostage whoever entered the house. The police took an hour to finally decide to go into the house, by which time Whiting had bled to death. An attempt by Whiting's daughter to sue the police on the basis that they had owed her mother a duty of care to go into the house as soon as the paramedics turned up failed, perhaps unsurprisingly in light of *OLL*. Now that *OLL* has been disapproved we can see that Whiting's case was not one where the police and paramedics could be rolled up into one 'rescue service' that simply failed to save Whiting from bleeding to death. Instead, if it could be established that the paramedics would have gone into the house had they not been stopped from doing so by the police, it would have been strongly arguable that the police would have owed Whiting a duty of care under the interference principle to go into the house

themselves. The aftermath of the case was pretty disastrous for Whiting's daughter – costs were awarded to the police and last anyone heard of the case, the police were seeking to recover £90,000 from the daughter by forcing a sale of her house. If they did recover their costs, perhaps they would now like to give them back to Whiting's daughter (if she is still around) on an *ex gratia* basis.

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