

## Case Note

### Caffrey v AAI Limited [2019] QSC 7

#### Key takeaways

- A deceased driver was found to have owed a duty to take reasonable care not to cause psychiatric injury to a policeman acting in the course of the performance of his duties who may be required to respond to an accident caused by their driving and who may witness the suffering and/or death of persons at the scene of the car accident.
- Drivers are not entitled to drive in any manner they wish, without regard to police officers who may attend at an accident they may cause, simply because police officers “undertake for the benefit of the public” to attend at such scenes.

#### The facts

While on duty on 17 February 2013, Senior Constable David Caffrey (**the plaintiff**) was called by a member of the public to attend the aftermath of a motor vehicle accident.

The plaintiff arrived at the scene before the ambulance and fire brigade and saw a vehicle wrapped around a tree. The plaintiff was advised by a member of the public that the driver was breathing. The plaintiff approached the car to find the driver was still alive, but his legs had been crushed.

The plaintiff cleared the driver’s airway and encouraged him to keep fighting for his life. While the plaintiff was picking up gloves and first aid material, the driver’s parents arrived at the scene. They had been driving around the area looking for the driver as they had been worried about him. The plaintiff reassured the driver’s mother that her son would survive and returned to support the driver.

Upon the arrival of the paramedics, steps were then taken to cut the driver from the car. The plaintiff put his arms around the driver’s mother and reassured her further. After he was cut from the car, the driver was placed on a stretcher so that the paramedics could continue to provide life support.

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The plaintiff was informed that the driver was going to die. He, along with a senior sergeant and a senior paramedic, approached the driver's parents and told them what was about to occur. The plaintiff took the driver's mother's hand and accompanied her, along with the driver's father, to say goodbye to their son.

The plaintiff developed Post Traumatic Stress Disorder as a result of his attendance at, and witnessing of, the aftermath of the collision. He commenced proceedings against AAI Limited (**the defendant**) as the insurer of the driver alleging that the driver breached the duty of care owed to him.

The plaintiff argued that the driver owed a duty to take reasonable care not to cause psychiatric injury to any persons who, acting in the course of the performance of their duties as a police officer, may be required to respond to an accident caused by their driving and who may witness the suffering and/or death of persons at the scene of the car accident.

The defendant denied that the driver owed a duty of care to the plaintiff on the basis that the risk of the plaintiff suffering psychiatric harm as a result of his presence and actions at the collision was not reasonably foreseeable by the driver, and alternatively that any foreseeable risk of psychiatric harm was slight and did not warrant the driver taking or avoiding action in respect of it. The defendant also argued that the public could reasonably expect emergency service officers such to be trained and equipped so as to avoid psychiatric harm at accident scenes.

## Findings

As a preliminary observation, Flanagan J noted that it was reasonably foreseeable that, upon discovery of an accident such as the one the plaintiff attended, triple zero will be dialled, and emergency services personnel, including police officers like the plaintiff, will be summoned to the scene. He also noted that although it may be uncommon for a police officer like the plaintiff to arrive at an accident scene as a first responder, before any other emergency services personnel such as paramedics, this does not prevent a duty being owed to the plaintiff. He concluded that arriving at an accident scene in a "statistically unlikely manner" is no impediment to a successful claim if it is reasonably foreseeable that the plaintiff may in any case be called to the scene and suffer harm there.

Flanagan J indicated that the presence of the driver's parents at the scene was something which would occur in the ordinary course of events. He reasoned this is because, from the driver's perspective, it would not be unexpected for his parents and relatives to be present at the scene of a serious accident. Flanagan J held, to the extent that the presence of the driver's parents contributed to the trauma experienced by the plaintiff, this should not be viewed as outside the contemplation of someone in the driver's position.

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Flanagan J went on to conclude that the plaintiff's psychiatric response to the situation was reasonably foreseeable. He stated as follows:

*"[the driver] being the sole victim in fact lent a degree of intimacy to the plaintiff's involvement. [the driver] suffered fatal injuries, and the plaintiff, essentially single-handedly for a time, sought to maximise [the driver's] chances of survival by moving [the driver's] head to clear his airway and trying to encourage him to stay alive. He was frustrated by what he perceived as Police Communications' interruption of his focused efforts. His bare hands at one point were covered in matter from [the driver's] head. He saw [the driver's] 'very squashed' legs. He sought to prevent further injury to [the driver] by directing firefighters not to cut [the driver] out of the vehicle. The plaintiff's experience was made all the more traumatic by the presence of the dying man's parents at the scene...after having, quite naturally, sought to reassure [the driver's] mother that her son would live, the plaintiff stood alongside her as she watched her son die. To adopt the words of Mason P in FAI General Insurance Co Ltd v Lucre... "[o]ne does not need to be a psychiatrist to understand the reality of the respondent's reaction." It was reasonably foreseeable."*

The plaintiff also argued that it was reasonably foreseeable that any persons (acting in the course of their performance of their duty as a police officer) in those circumstances would suffer a psychiatric injury.

The defendant's position was that reasonable members of the public are entitled to expect that police officers and other emergency service personnel, as a product of their training and frequent exposure to accident and crime scenes, are equipped to avoid or resist psychiatric harm.

Flanagan J accepted that the public are entitled to expect a high degree of psychiatric endurance from police officers and that reasonable foreseeability may therefore pose a greater hurdle to police officers in claims for pure psychiatric harm than it does for others. His view, however, was that the accident exposed the plaintiff to deeply distressing and personalised circumstances.

Flanagan J went on to note that a member of the public, like the driver, is not entitled to drive in any manner he wishes, without regard to police officers who may attend at an accident he may cause, simply because police officers "undertake for the benefit of the public" to attend at such scenes.

## Implications

Insurers may be concerned that this decision may open the flood gates and lead to an increase in the number of claims made by witnesses, first responders and professionals who have had a more removed involvement with an accident scene. Indeed, the defendant in this case argued - that a duty being owed to the plaintiff

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would unacceptably expand the categories of potential claims of psychiatric harm, and expose defendants to increased liability.

In Flanagan J's view, claims in respect of psychiatric harm are limited by at least two factors. First, the threshold requirement of an injured person proving they are suffering from a recognisable psychiatric illness. Second, courts are equipped to control any increase in claims by adopting a principled approach to the particular facts of each case. He concluded that whether a duty of care is owed in particular circumstances is to be resolved by a process of legal reasoning, by induction and deduction by reference to the decided cases and, ultimately, by value judgments of matters of policy and degree.

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