# No Duty to Warn of the Obvious

The Court of Appeal handed down judgment today in the eagerly anticipated appeal in **Edwards v London Borough of Sutton (2016)**. The claim concerned the duty owed by occupiers for structures present on their land. The Claimant was pushing a bicycle over a small ornamental footbridge which passed over a stream in a park owned and occupied by the London Borough of Sutton. The bridge was humped and had obviously low parapet sides. It was many years old and there was no history of any previous accidents. For reasons which remained unexplained and unproved at trial, the claimant lost his balance and fell over the edge, into the water below. As a result he sustained a serious spinal cord injury.

The trial judge at first instance found that the duty under the Occupiers Liability Act 1957 did not necessitate an enquiry into the objective safety of the premises but only into whether the visitor was 'safe in using' them. He considered that although the Defendant was not obliged to update the bridge by installing handrails in circumstances where there had been no standards or requirements which existed at the date of its construction, there was nonetheless an obligation on the Defendant, who had not properly risk assessed the bridge, to warn visitors of the presence of the low parapets and instruct them to take a different route through the park.

The Court of Appeal (McCombe LJ giving the lead judgment with whom Arden and Lewison LLJ agreed), held that the judge had failed to recognise that under the 1957 Act it was necessary to identify what the relevant danger (if any) is before considering whether the occupier is required to do anything about it. It noted that ornamental bridges with low walls were common features of public gardens and are regularly traversed without difficulty. Whilst it was possible, in principle, for the low parapets sides of the wall to constitute a 'danger', such a feature did not trigger a duty on the authority to take any further steps, for two reasons. First of all, the seriousness of the accident which had befallen the Claimant could not be equated with there being a serious risk of it occurring in the first place. There had been no previous accidents of any kind and any risk, if it existed, was remote. Secondly, relying on Staples v West Dorset (1995) PIQR 439 and other authorities, the court held that there was no duty to warn of obvious risks. The approach to the bridge was clear and its width and the height of the parapets was obvious. Furthermore, a risk assessment would have made no difference.

McCombe LJ concluded by noting that he found himself in agreement with the submissions of Counsel for the Defendant that *"not every accident (even if it has serious consequences) has to have been the fault of another; and an occupier is not an insurer against injuries sustained on his premises"*.

**Andrew Warnock QC** and **Jack Harding, of 1 Chancery Lane**, instructed by Clyde & Co LLP, acted for the successful local authority.