

Shifting duty of care towards local authorities

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Personal Injury analysis: In what circumstances is it reasonable to impose a common law duty of care on a local council? Teertha Gupta QC, barrister at 4 Paper Buildings, examines the judgment in *CN v GN* and explains that this decision paves the way for many future claims.

Original news

CN (a protected party suing by his litigation friend the Official Solicitor) and GN(a child suing by his litigation friend the Official Solicitor)v Poole Borough Council [2016] EWHC 569 (QB)

What issues did this case raise? Why is it significant?

This case is about two young vulnerable boys suing (via the Official Solicitor) a local authority for breaching its duty of care to them (within the common law of negligence) for:

‘...the failure to protect them as children and to remove them from home (and if necessary take them into the care of the local authority) if that was required to protect them from personal injury...’

The first reaction one has is that surely public policy would dictate that such a claim would not be viable. The issue as counsel for the children, Miss Gumbel QC, explains was whether, following *Z v United Kingdom* (2001) 34 EHRR 97, [2001] 2 FCR 246 and subsequent authorities including in particular *D v East Berkshire NHS Trust & Others in the Court of Appeal* [2003] 4 All ER 796, a duty of care at common law can be owed by a local authority to children residing in its geographical area to protect them from harm—in this case risk of personal injury.

The injury concerned was prolonged abuse, anti-social and criminal behaviour perpetrated by members of a particular family who lived on the estate on which they were housed by the council between May 2006 and December 2011. This is set out in paragraphs 2.0–3.65 of a Home Office report into anti-social behaviour dated 10 March 2010.

What did the court decide?

This was a successful appeal against a decision of a High Court Master, which had originally struck out the claims of the two children for damages in negligence against Poole Borough Council (PBC). The High Court Judge, Mrs Justice Slade, decided that:

‘The claim will be considered on its particular facts to ascertain whether all the elements necessary to establish a cause of action in negligence are present: foreseeability, proximity or assumption of responsibility and that it is fair, just and reasonable to impose liability. Whether a common law duty of care was owed by the Council to CN and GN will depend upon a full examination of the facts. This issue is not apt for determination on an application to strike out the claim. Actions can only be struck out under CPR 3.4(2)(a) on the grounds that they disclose no reasonable cause for bringing the claims. The Master erred in so finding in this case.’

How helpful is the judgment in clarifying the law in this area?

At first blush, one would say not at all—it is only a successful appeal of a strike out and therefore only a decision that there is a case to be made and to answer. However, on further analysis it clarifies the law in relation to the lack of relevance of an old House of Lords authority, *X and others (minors) v Bedfordshire County Council* [1995] 3 All ER 353, because subsequently in the Court of Appeal in *D v East Berkshire NHS Trust and Others* [2003] 4 All ER 796, the court held that, following the Human Rights Act 1998:

‘In so far as the position of a child is concerned, we have reached the firm conclusion that the decision in *Bedfordshire* cannot survive the Human Rights Act... It follows that it will no longer be legitimate to rule that, as a matter of law, no common law duty of care is owed to a child in relation to the investigation of suspected child abuse and the initiation and pursuit of care proceedings. It is possible that there will be factual situations where it is not fair, just or reasonable to impose a duty of care, but each case will fall to be determined on its individual facts’.

As part of the statutory context to this common law claim every local authority’s statutory duty under sections 17 and 47 of the Children Act 1989 (to safeguard the welfare and promote the upbringing of all children in their area) were taken into account.

In essence, therefore, these boys can argue that it was foreseeable that they would suffer harm if they were housed in the premises on the estate. The family that perpetrated anti-social and criminal acts affecting them had been reported to the council as having caused trouble on the estate before they and their mother moved in. They then suffered from the very behaviour the council was aware that members of the ‘delinquent’ family had continuously perpetrated. The council also knew CN was disabled and GN was a minor in a vulnerable family.

This decision (if unappealed) means that theoretically it is just and reasonable to impose a duty of care on the council in these circumstances.

What does all this mean for lawyers and their clients?

This decision paves the way for many future claims and children departments need to be alive to actively protecting children who are living in social housing and under the aegis of their care. Conduct a case review of your ‘children in need’ files and identify similar cases and steps to be taken.

Lawyers need to realise that there is now another facet to their clients’ cases if they are living in such distressed circumstances, especially so if their clients are parents involved in care proceedings.

How does this fit in with other developments in this area? Do you have any predictions for future developments?

This decision is in keeping with the judgment in *Z v United Kingdom*, in which it was held that there was a positive obligation in the government to protect children from treatment contrary to article 3 of the Convention. My prediction is that there will now be active consideration on behalf of many children (and adults) as to potential claims for negligence in similar circumstances.

Interviewed by Alex Heshmaty.

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