Browne Jacobson

Social care negligence claims – is there ever a time when an application to strike out is appropriate?

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Most defendant stakeholders consider that the CN & GN decision means it will be much more difficult for claimants to pursue claims in negligence. Some of the larger claimant firms are, nevertheless, prepared to invest a significant amount of time and money in investigating these cases further. This, in turn, has resource implications for local authorities.

The combination of legally-aided infant claimants and qualified one-way costs shifting means that local authorities can be put to enormous expense if they are required to give pre-action disclosure in relation to potentially unmeritorious cases.

Hence, is an application to strike out always doomed to fail? The honest answer, at this stage, is that we simply do not know, but some local authorities, particularly those facing a very large number of CN & GN based claims, may decide to test the water, not least so that they can assess whether it is worth taking on additional staff and resources in order to deal with pre-action applications for disclosure.

When dismissing the appeal in the CN judgment, the Supreme Court will have looked at the case as it was pleaded in the Particulars of Claim. Their Lordships will have had to assume that the facts pleaded by the Claimant were made out. CPR Practice Direction 3A para 1.4(3) provides that a court may strike a case out if it appears to the court that the particulars of claim "… contain a coherent set of facts but those facts, even if true, do not disclose a legally recognisable claim against the defendant."

This means that in CN & GN the Supreme Court, in striking out the claim, had to assume that the facts set out in the Particulars of Claim were correct. Looking at the pleaded claim, it can be seen that the following facts were asserted, and we set them out here because parallels can be drawn in a number of possible failure to remove cases we are currently seeing:

- the police made a safeguarding referral to Poole
- Poole carried out an assessment of one of the children's needs
- the children were both allocated social workers
- a Child in Need Plan was completed for one of the children
- a Child Protection Strategy Meeting was held after an incident of self-harm by one of the children
- one of the children was made the subject of a Child Protection Plan under the category of 'risk of physical harm'.

All in all, the degree of engagement Poole Borough Council and other agencies in the area had with this family, was very significant indeed, and even in those circumstances, the Supreme Court held that, on the particular facts of this case, there was no duty of care, there was no assumption of responsibility, and there was no reliance by the mother on the local authority.

Taking all of this into account, and given the hugely disproportionate costs that are faced by local authorities in dealing with claims that lack legal merit, it is our view that local authorities do not simply have to assume that disclosure will have to be given in response to every

single request and that cases will have to be litigated out.

It is a requirement under the CPR to litigate proportionately; therefore, in some instances it may be a better use of local authorities' limited resources to require claimants' solicitors to make an application for pre-action disclosure and provide the required evidence in support or if proceedings are issued, to make an application to strike out, where the facts of the case warrant it i.e. where the relationship between the local authority and the troubled family is equally or even more remote than that pleaded in the Poole case.

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