

High Court strikes out ‘failure to remove’ Human Right Act claim against two local authorities

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21 January 2022

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In AB -v- Worcestershire County Council and Anr, the claimant issued a failure to remove type negligence claim against Birmingham City Council and Worcestershire County Council under the Human Rights Act 1998.

In issuing the claim, the claimant relied on a series of referrals to both local authorities between 2005 -2011. The referrals were sporadic and included, mother pushing, bumping heads, scratching his arm and neck with finger nail, being dragged upstairs and squalid living conditions, which were unsubstantiated.

In dismissing the claim Margaret Obi, sitting as a deputy high court judge, concluded that a child has no ‘right’ to seek a care order under article 6 of the European Convention on Human Rights, or to have one made in respect of their care. She ruled that the defendants had not done anything to interfere with AB’s rights or taken any action in relation to which a dispute could have arisen.

According to the judge, there was insufficient evidence that the various incidents reached the high threshold required to engage AB’s claim under Article 3 of the Convention (Freedom from torture and inhuman or degrading treatment).

The judge concluded that as the claimant was never in the care or control of either local authority no operational duties to investigate under Article 3 arose. She also accepted the argument that any investigative duty owed by the state was towards the prosecution and punishment of criminal behaviour, by the police, rather than the protection of individuals by the two local authorities.

Sarah Erwin-Jones, a partner at law firm **Browne Jacobson** who represented **Worcestershire County Council**, said:

“We know how nuanced and difficult social workers’ roles are, and how much their concerns about this type of claim can impact their ability to use their best judgement effectively. We hope that this judgment will limit Article 3 claims where neglect only is alleged, and also narrow the issues in claims alleging different types of abuse in the family home.

“Following the Supreme Court decision in *CN & GN v Poole Borough Council* in 2019 and other subsequent cases, it is now established law that the mere fact that various steps are taken by local authorities in the discharge of its child protection functions is not enough to give rise to an assumption of responsibility.

“Consequently, claimants have struggled to prove their ‘failure to remove’ type claims against local authorities and we have seen an increased emphasis on potential claims under the Human Rights Act 1998. In addition, claimant solicitors are bringing novel claims to circumvent their difficulties.”



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