

‘Failure to Remove’ Claims brought Pursuant to the Human Rights Act 1998

Following the Supreme Court decision in *CN & GN -v- Poole Borough Council* [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.

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Following the Supreme Court decision in *CN & GN -v- Poole Borough Council* [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.

In our case of *AB -v- Worcestershire County Council and Anr*, AB made a failure to remove type claim, which was pleaded (in 5 different attempts at Particulars) in negligence, and pursuant to the Human Rights Act 1998. AB alleged that the local authority breached the following ECHR articles:

- Article 3 – Freedom from torture and inhuman or degrading treatment.
- Article 6 – Right to a fair trial.
- Article 8 - Respect for your private and family life.

Both Defendants made an application to strike out AB’s claim or for Summary Judgment. Shortly before the application hearing, AB discarded his negligence claim against our client. During the hearing, AB also abandoned his Article 8 claim because it added nothing more to his Article 3 claim.

The Judge struck out AB’s Article 6 claim because it was misconceived. AB asserted that he had a civil right to be taken into care. The Judge concluded that a child has no ‘right’ to seek a care order, or to have one made in respect of their care. In addition, there was no relevant dispute in this case. The Defendants had not done anything to interfere with AB’s rights or taken any action in relation to which such a dispute could have arisen.

The Judge considered each referral made to the local authority to assess AB’s Article 3 claim. The Claimant relied on 7 referrals made to the first local authority and 4 referrals made to Worcestershire County Council. 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.

Summary Judgment was granted to the Defendants in relation to AB’s Article 3 claim. The Judge concluded that there was insufficient evidence that the various incidents reached the high threshold required to engage AB’s article 3 claim. She also concluded that since the Claimant was never in the care or control of our client no operational duties to investigate under Article 3 arose. Furthermore, she 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 these local authorities.

Claimants are still pursuing their ‘failure to remove’ type claim pursuant to the Human Rights Act 1998 and using innovative claims. 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.

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