

A brief summary of the Court of Appeal decision in HXA v Surrey County Council and YXA v Wolverhampton City Council

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The Facts

The Local Authority were involved with HXA's family initially after referrals of suspected physical abuse and neglect perpetrated by HXA's mother and, later, allegations of sexual abuse against her mother's partner, Mr A, were received. An assessment and "keeping safe" work were recommended, but not carried out. In 2009, Mr A was convicted of offences of a sexual nature against HXA and he was incarcerated.

YXA suffered with epilepsy, learning difficulties and autism spectrum disorder. A Paediatrician expressed concern about YXA's parents overmedicating him and recommended that YXA should be taken into care. From April 2008, the Local Authority provided regular respite care for YXA pursuant to section 20 Children's Act 1989. In December 2009, YXA's mother admitted that YXA had been physically abused and had been over medicated. YXA was initially accommodated by the Local Authority with his parents' consent. A Care Order was granted in March 2011.

Both HXA and YXA brought claims against local authorities alleging breach of a common law duty to take each of them into care. At first instance, each common law claim was struck out.

Details of the Appeal

The Court of Appeal heard the appeal against the decision of Stacey J, who struck out the cases brought by HXA and YXA in negligence. Stacey J concluded that, following the case of CN & GN v Poole Borough Council [2019], a Local Authority will not ordinarily owe a duty of care to a child by virtue of exercising its child protection functions. "Something more" is required.

Furthermore, in respect of the case brought by YXA, Stacey J concluded that placing YXA into voluntary respite care pursuant to section 20 Children's Act 1980 did not amount to the "something more" needed to establish an assumption of responsibility.

In May 2022, the Court of Appeal considered the Claimants' appeals and concluded that there were circumstances when a Claimant could prove that a Local Authority assumed a responsibility for their welfare. However, it was not appropriate to assess whether a local authority owed a Claimant an assumption of responsibility at a strike out hearing. The Court concluded that this was a complicated and developing area of law and the Court needed to analyse all the evidence at trial before reaching a definitive decision on whether the Local Authority assumed a responsibility for a child's welfare.

Serious Costs Consequences of the Appeal

If this appeal decision is unchallenged, the result will be that claimants can proceed with their 'failure to remove' type of claim, arguing that a trial is required in each case.

The costs of these types of claims are usually high due to the extensive amount of documentation, having to statement multiple witnesses and obtaining expert evidence in both psychiatry and social care. Many are disappointed that the Court of Appeal did not provide guidance to enable parties to deal with these cases proportionately, at an early stage. Instead, the Court of Appeal has concluded that, for the most part, these types of cases can only be dealt with at a trial. This will put further financial pressures on local authorities and the public purse.

For these reasons, the Defendants intend to apply for permission to appeal to the Supreme Court to review the law on duty of care. We will provide you with an update as this interesting case proceeds.

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