

Vulnerable adults, local authorities and the duty to protect

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Important Court of Appeal decision rejects opportunity to extend duty of care.

X (1) and Y (2) (protected parties represented by their Litigation Friend, the Official Solicitor) and LB Hounslow

The Court of Appeal today gave judgment in the case of **X (1) and Y (2) v LB Hounslow** in a decision that will be welcomed by social workers, housing officers, risk and insurance managers and insurers. Both claimants were successful at first instance in the High Court before Mr Justice Maddison. Barlow Lyde & Gilbert LLP (BLG) has successfully appealed the Order of Mr Justice Maddison, and the judgment of the Court by Sir Anthony Clarke, Master of the Rolls, provides a very clear analysis of the law. A potential new avenue for claims on behalf of vulnerable adults has been headed off. Furthermore, at a time when social workers are under ever increasing media scrutiny, this judgment praising the Council's social worker makes for reassuring reading.

The facts

It was accepted by all parties and the Court that this was a tragic case. X and Y lived in a medium rise council flat in Hounslow with their two children. They had mild learning difficulties and their IQs had been assessed at various times as being in the 70s, with Y being slightly more able than X. Essentially, the claimants were vulnerable adults who needed support but were, nevertheless, able to live independently in the community and did not require supported living accommodation.

On the weekend of 17-19 November 2000, X and Y were effectively imprisoned in their own home and repeatedly assaulted and abused by a group of local youths. At the time of the attacks, X and Y were 44 and 38 years of age, respectively.

For the purposes of this briefing note, it is

not necessary to detail the various criminal acts of the local youths - terming them as disgusting and depraved will suffice. The youths were speedily caught by the Metropolitan Police and, after their criminal trial, sentenced to terms of imprisonment.

It was the claimants' case that they should have been protected from the assaults and abuse that they suffered by the Local Authority. As pleaded, the protection should have been supplied by the Council's then Social Services and Housing Departments.

In order to understand the basis for the Court of Appeal decision, it is necessary to set out a brief history of events leading up to the weekend in question.

In August 1999, a social worker (TH) of Hounslow's Community Team for People with Learning Difficulties (CTPLD) became

Y's Social Worker and, thereafter X's, in March 2000. The flat that the claimants lived in was not particularly suitable for a family with young children, and there had been an earlier reported arson attack, although there was little detail in that respect. A request for the family to be re-housed because the flat was unsuitable had been made, but Hounslow, like many other metropolitan housing authorities, suffered from a severe shortage of appropriate accommodation. The claimants were placed on the waiting list.

During the course of early summer 2000, X befriended a group of local youths and allowed them to enter the block of flats (i.e. bypassing the security system). The local youths used the claimants' flat to take drugs, engage in underage sexual activity, store stolen goods and generally misbehave. After a while, they began bullying X and demanding food from him.

TH had already written to the Housing Department in March 2000 and spoken by telephone to the Housing Department in August 2000. The Housing Department said on both occasions that the family did not have enough points to be re-housed urgently and they remained on the waiting list.

In September and October 2000, reports were made by various individuals as to the undesirable behaviour of the local youths in the flat.

On 11 October 2000, X was assaulted at McDonalds by one of the youths who was later to take part in the serious abuse. He was assaulted for allegedly having "grassed".

On 18 October 2000, TH wrote to the Housing Department stating, inter alia, that she had great concerns about the family, they were very vulnerable, they were being exploited, X had been attacked and they were both at risk and scared to leave their flat.

As a result, on 23 October 2000 the Housing Department sent an officer round to talk to the claimants with TH. At the meeting, the claimants explained that they had received offensive phone calls, confirmed that X had

been attacked and that they wished to be moved. They would not, however, name the youth who had assaulted X. The report form noted that the claimants wanted a transfer.

The situation began to escalate as from 26 October when a friend of X's mother wrote to TH, again expressing concern about the behaviour of the local youths. On 27 October, X's sister-in-law expressed concern to Hounslow about his vulnerability. On 31 October 2000, X's mother reported that he had been threatened by a local youth. TH rang the police who said that they had also heard this from the mother but could not act until X made a formal complaint. TH told X to inform the police should the youth threaten him again.

On 31 October, the mother wrote a long letter to the Social Services Inspectorate. They sent the letter on to Hounslow.

The police were involved on 1 November 2000 again, and TH was informed. On 3 November 2000, TH again wrote to the Housing Department reporting that, inter alia, X and Y were being exploited by the local youths, they had been threatened and bullied and were too frightened to report it to the police. She said that they needed a new start and that their current accommodation was very unsafe.

Between 5-17 November 2000, there were further incidents requiring the involvement of the police. TH was in regular contact with the Housing Department and a meeting was fixed to try and resolve matters for 22 November 2000.

In the interim, the tenants of the block of flats had sent a petition to the Housing Department with regard to the behaviour of the local "youths", although it blamed the claimants as well as the youths.

TH continued to liaise with the Housing Department who sent housing transfer forms to the claimants to update. There were various internal e-mails within the Housing Department showing that the wheels were being put in motion, but the case was not treated as an emergency.

Evidence was given at trial that emergency

transfers of council tenants usually only occurred where there was extreme domestic violence or serious racist behaviour or assaults.

In summary, Hounslow were facing a deteriorating situation affecting the claimants, who argued at trial that Hounslow did not act quickly enough to protect them from the serious situation that they were facing. It was argued that the behaviour of the teenagers was foreseeably likely to end in serious harm to the claimants and this could have been prevented by the family being removed and placed in bed and breakfast or other emergency accommodation.

The Council called TH, her head of department, and two housing officers as witnesses. The arguments run were that the final assaults were not foreseeable, the Council was not faced with an obvious emergency situation, the claimants did not want to move until shortly before the weekend in question, and the planned meeting on 22 November 2000 was a substantive move forward with regard to the re-housing of the claimants. Most importantly, there was no duty of care in the circumstances.

The law

The trial judge was understandably very sympathetic towards the claimants. He accepted that this was a novel case and establishing a duty upon Hounslow to act in the circumstances would result in an incremental increase in the duty of care.

However, he held that it was fair, just and reasonable to impose a duty upon Hounslow to move the claimants and, furthermore, stated that the assaults were reasonably foreseeable. Judgment was duly given for the claimants in the sum of agreed damages of £97,000. The estimate of the claimants' solicitors for their costs up to the conclusion of the case was £250,000. There was, therefore, a good deal riding on the appeal.

The Court of Appeal reviewed the well known line of cases, commencing with [Stovin v Wise](#) and concluding with [Gorringe v Calderdale MBC](#). The Court of Appeal was assisted by two cases recently heard in

the House of Lords, namely [Van Colle v Hertfordshire Police](#) and [Mitchell v Glasgow City Council](#).

The Court of Appeal held that this case essentially turned upon whether there had been an assumption of responsibility by Hounslow which might give rise to the imposition of a duty of care owed to the claimants. In order to establish a duty of care, the claimants had to show that the Council was not just failing to exercise its statutory duties and powers properly but also had assumed a responsibility in any event to protect the claimants by removing them from the flat to temporary emergency accommodation.

The Court of Appeal considered that both the Social Services and Housing Departments were merely seeking to carry out their statutory functions in the particular case and no more. There was no person or department who assumed a responsibility to protect the claimants as defined in the case law, and particularly in [Gorringe](#). No one within Hounslow created the danger faced by the claimants or assumed specific responsibility for their safety.

Whilst expressing itself cautiously, the Court of Appeal said that there was an important difference between a case where children assert that a duty of care is owed to them and a case such as this one where the claimants were adults living in the community, albeit vulnerable adults. This is largely because local authorities have specific obligations in respect of children under the 1989 Children's Act which are different from those very limited obligations which apply in respect of adults.

In the absence of any relevant assumption of responsibility, the Court of Appeal held that it would not be fair, just and reasonable to impose a duty of care upon Hounslow in respect of their duty to protect the claimants.

The Court of Appeal went on to say that if there was anyone who assumed a responsibility to the claimants, it was TH. The Housing Department could not possibly have assumed such a responsibility.

TH was an excellent witness who had

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conducted herself diligently. Pleasingly, this was accepted by the Court of Appeal who stated that TH "behaved impeccably throughout".

Summary of the decision

- 1 There was no assumption of responsibility to the claimants at common law by Hounslow.
- 2 Neither Hounslow nor its employees owed the claimants a duty of care at common law.
- 3 Neither Hounslow nor its employees were in breach of a duty of care to take reasonable care to remove them from the flat into emergency accommodation.
- 4 As a consequence, the appeal was allowed and the claims dismissed.

Comment

The Court of Appeal, and indeed all lawyers in the case, had every sympathy for the claimants who were subjected to an appalling ordeal. However, in these difficult

times for the public purse, the decision of the Court of Appeal is surely correct. The decision followed a distinguished line of House of Lords authority and, more practically, the claimants in any event were entitled to compensation from the Criminal Injuries Compensation Authority. However, whilst this line of claim has now been closed off (subject to possible appeal), it would be hopelessly optimistic to believe that committed and inventive claimant lawyers will not seek alternative routes to try and impose an alternative duty of care upon the public sector to protect the vulnerable.

It is, of course, not for this briefing note to consider the wider important societal problem, namely the appalling behaviour of a very small but not wholly insignificant number of teenagers. ■

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