


# Court delivers key ruling on a local authority's duty of care in 'Failure to Remove' negligence claims

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**A recent judgment** (8 November) has confirmed that the provision of s20 accommodation under the Children Act 1989, does not automatically fix a local authority with a general duty of care.

In dismissing the appeal in *YXA v Wolverhampton City Council*, the Honourable Justice Stacey distinguished the duty of care that arises after a full Care Order is made - where a local authority becomes the statutory parent, and the entirely different position of a child receiving temporary and intermittent care under section 20 Children's Act 1989 with the consent of the child's parents, where the parents retain exclusive parental responsibility.

Sarah Erwin-Jones, a partner at law firm Browne Jacobson who represented Wolverhampton City Council, said :

"This is a significant judgment because it confirms the position that even though a local authority carries out various steps as part of its child protection functions, this does not automatically mean that it assumes responsibility for the children with whom it is working.

"Since the Supreme Court ruling in *CN & GN v Poole Borough Council* claimant solicitors in similar 'failure to remove' claims have argued that Section 20 accommodation creates an automatic assumption of responsibility. The starting point must now be that this is not the case.

"The judge has also made it clear that this not a developing but a settled area of law which. That means that claimants will struggle to bring similar 'failure to remove' type claims in negligence against local authorities in the future.

"However, we can expect much more emphasis on potential claims under the Human Rights Act 1998, which trigger interesting questions about funding, limitation and insurance cover."

## Background

YXA is a severely disabled man, who suffers from epilepsy, learning difficulties and autistic spectrum disorder. YXA and his family moved to the defendant's area in August 2007. Concerns were raised about the standard of parenting and it was recommended that YXA was placed into care. From April 2008 onwards, the local authority provided regular respite care for YXA under section 20 Children's Act 1989. His parents retained parental responsibility for YXA. The local authority did not acquire it.

In 2008, there were additional concerns about the family, which included the mother's alcohol and cannabis consumption, physical chastisement and further reports of excessive medication being given to YXA by his parents. In 2009, there were yet more problems, including YXA being admitted to hospital for seizures, which was thought to be caused by over medication. Towards the end of the year, YXA's parents' relationship broke down and YXA was placed into emergency respite care. In December 2009, YXA's mother admitted that YXA's father shouted and hit YXA and she administered diazepam. YXA was initially accommodated by the Local Authority under section 20 Children's Act 1989. A Care Order was granted in March 2011.

In respect of the short placements into respite care, the claimant's counsel argued that:

- A duty arose to consider care proceedings each time respite care was provided.
- A duty arose to consider whether it was appropriate to return the child to the parents each time respite ended.

The Judge struck out the common law claim, but not the parallel Human Rights Act Claim.

## Contact



Henrietta Scott

Head of Marketing

PRTeam@brownejacobson.com

+44 (0)330 045 2299

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