

IN THE COUNTY COURT AT BRADFORD

BETWEEN

A CLAIMANT

Claimant

-and-

BRADFORD METROPOLITAN DISTRICT COUNCIL

Defendant

NOTE ON THE JUDGMENT GIVEN BY
DISTRICT JUDGE CLAIRE JACKSON ON 15.9.20

1. The court struck out a “failure to remove” claim under CPR 4.3(2)(a) on the ground that the requirements for the imposition of a duty of care identified in **Poolborough Council-v-GN and CN [2019] UKSC 25** (“**CN**”) could not arguably be met on the pleaded facts.

The claim

2. C’s case was that D, a local authority, owed her a common law duty of care. It had breached that duty of care by failing to remove her into care and as a consequence C had suffered “*sexual abuse and rape*” committed by her mother’s partner, XY. It was accepted that the claim concerned a duty to protect C from harm caused by a third party and that, following **CN**, it was necessary for C to show that D had assumed a responsibility to protect her from that harm. The pleaded case was that D owed the claimant a duty because it had “*assumed responsibility for the claimant (within the meaning of **CN**) on 9/3/90, alternatively no later than December 1991*”.

The facts

3. C first came to the attention of D in February 1990, aged 12, when her mother (M) told D she was having problems with C’s behaviour. On 6 March 1990 D wrote to M inviting her and C to a meeting with a social worker (SW), which occurred on 9 March 1990. SW concluded that it was appropriate for D to become involved and a SW was allocated. Thereafter D was intermittently made aware of problems Cs behaviour was presenting to

M and XY and to her father (F) and the relationship difficulties this was causing. There were a number of meetings between C, M and/or XY and SW. C spent some time in the care of F. Arrangements were made for C to be seen at the Child and Family Unit (CFU). On the first occasion (April 1990) C failed to attend and the case was closed though she attended in early 1991 and an assessment was conducted in February 1991.

4. In September 1991 M said she wanted D's support in making alternative arrangements for C's care, or else C should be received into care. M was told that receipt into care was not appropriate. More work was undertaken with the CFU in late 1991 and in early 1992 placement with other relatives was considered. In March 1992 M again expressed the wish for C to live with another family member or to be accommodated by D. C spent some weekends with an aunt. In July 1992 XY reported that C had damaged the house and the case was reallocated for an updated assessment. An appointment with C was arranged but she did not attend. SW wrote to both C and M offering to continue to assist if assistance was required. The case was closed in September 1993.

The hearing

5. D's case was that in order to establish a duty of care based upon an assumption of responsibility, it was necessary for C to show that D had "actually done acts or entered into relationships or undertaken responsibilities" (**CN** [33]), or had "undertaken the performance of some task or the provision of some service for the claimant" (**CN** [88]), from which an undertaking of responsibility could be inferred. The pleaded case was wholly inadequate in identifying the act or task or service relied upon. It was obvious that no duty had been assumed on 9 March 1990 because D had not done anything, and the allegation that a duty was assumed later was unparticularised.
6. It was not solely a pleading point. There was nothing in the factual material set out in the particulars of claim that could arguably give rise to an assumption. The involvement of D was limited to investigation, assessment and monitoring of C's circumstances and the provision of ad hoc assistance when it was requested. C was never taken into D's care or accommodated by D; she was never the subject of any formal child protection investigation or child protection conference.
7. C argued that this was a novel and developing area of law, as the dramatic change brought about by **CN** demonstrates, and the strike out procedure was not appropriate. If the pleaded case was defective C should be given the opportunity to amend, but the

pleadings were not defective because there was significant involvement by D in C's family identified, and it was possible for the Judge to infer from that involvement that a responsibility to protect C from harm had been assumed.

8. The factual circumstances in **CN** were very different because the source of the danger was outside the home. **CN** did not answer the question: what action by D, short of taking C into care, might give rise to the necessary assumption? There was no authority in that issue and it should be decided after a trial when the facts have been determined.

The decision

9. The Judge directed herself that she must approach the hearing on the premise that the pleaded facts were true and then asked whether the pleaded case disclosed an arguable cause of action. If it did not, it remained necessary for the Judge to consider whether the pleaded facts disclosed a claim, even if it was not adequately identified in the pleadings (**Soo Kim-v-Youg [2011] EWHC 1781 (QB)**).
10. **CN** had settled the law in this area and the argument that the jurisprudence was novel and developing was rejected. There were differences between the pleaded facts of **CN** and the instant case, but both concerned the question of when a local authority, exercising its statutory child protection powers and duties under the 1989 Act, might come under a common law duty to protect the child from harm caused by others, and so the principle enunciated in **CN** applied to this claim.
11. C must establish that D did something that gave rise to an assumption of responsibility towards C and that C (or M) relied on the exercise of reasonable care by D. The particulars of claim did not identify the act relied upon, did not say why that act amounted to an assumption and did not deal with the issue of reliance.
12. There was no assumption in March 1990 because D had not done anything. Thereafter, there was nothing in the particulars of claim or in C's skeleton or submissions that indicted what it would be alleged D did to assume a responsibility. Further there was nothing, on the judge's analysis of the pleaded facts, that could arguably have that effect.

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