



Press Summary

THE COURT ORDERED that no one shall publish or reveal the name or address of the Respondents or publish or reveal any information which would be likely to lead to the identification of the Respondents or of any member of their families in connection with these proceedings.

20 December 2023

HXA (Respondent) v Surrey County Council (Appellant)

YXA (a protected party by his litigation friend the Official Solicitor) (Respondent) v Wolverhampton City Council (Appellant)

[2023] UKSC 52

On appeal from [2022] EWCA Civ 1196

Justices: Lord Reed (President), Lord Briggs, Lord Sales, Lord Burrows, Lord Stephens.

Background to the Appeal

This appeal concerns two separate claims in the tort of negligence brought, respectively, by HXA against Surrey County Council and by YXA against Wolverhampton City Council (each an “LA” and, together, the “LAs”). On the assumed facts (no factual determinations having been made), HXA and YXA (each a “**claimant**” and, together, the “**claimants**”) were children when they suffered sexual or physical abuse by a parent or parent’s partner. One of the necessary components of a negligence claim is that the defendant owed the claimant a duty of care. Both claimants allege that their LA owed them a duty of care because the LA had, by its conduct, assumed responsibility to protect them from harm caused by third parties.

Local authorities have certain duties and powers in respect of their social work functions, including under the Children Act 1989. However, the claims brought by YXA and HXA are not concerned with a breach of statutory duty. Rather they concern whether the LAs owed a duty of care at common law to protect the claimants from harm.

The key facts alleged in support of each claim, which the Court of Appeal described as “shocking and disturbing”, are as follows.

As a child, HXA was physically assaulted by her mother and sexually abused by her mother's partner. HXA's mother's partner was convicted of seven counts of raping HXA between the ages of 9 and 16 and was sent to prison for 14 years. HXA's mother was convicted of indecently assaulting her and was sentenced to 9 months' imprisonment. The LA had resolved to conduct "keeping safe" work with HXA but did not in fact do so.

In YXA's case, it is alleged that YXA, who has epilepsy, learning disabilities and autism spectrum disorder, was physically assaulted by his parents and given excessive medication by them to keep him quiet. The LA provided "respite care" for YXA by placing him in foster care for roughly one night every fortnight and one weekend every two months, with his parents' agreement.

The LAs applied to strike out the claims on the basis that they contained no arguable duty of care and therefore should not proceed to trial. The first instance judges and, on appeal, the High Court struck out the claims. The Court of Appeal allowed the appeal of HXA and YXA and reversed the strike-out. The LAs now appeal to the Supreme Court.

Judgment

The Supreme Court unanimously allows each appeal. The claimants' particulars of claim disclose no basis upon which a relevant assumption of responsibility by LAs could be made out at trial. It follows that there was no arguable duty of care as alleged in either case. Both cases were correctly struck out at first instance. Lord Burrows and Lord Stephens give a joint judgment with which Lord Reed, Lord Briggs and Lord Sales agree.

Reasons for the Judgment

In general terms, the decisions in these cases turn on the application of the decision and reasoning in the leading Supreme Court case of *N v Poole Borough Council* [2019] UKSC 25, [2020] AC 780. In that case, it was held that the defendant local authorities did not owe a duty of care to protect children who had been subjected to verbal and physical abuse by their neighbours. The Supreme Court made clear there that in this type of case, where the issue is whether a local authority has a duty of care to use reasonable care to confer a benefit on the claimant by protecting them from harm by a third party, it is necessary to establish that the local authority has assumed responsibility to protect the claimant from that harm [1], [3], [44] – [57], [86].

In the case of HXA and YXA, each claimant therefore had to establish that their LA had assumed responsibility to use reasonable care to protect them from the abuse. An alleged duty of care is assessed by applying the same principles to the local authority as would be applied to a private individual. The fact that a local authority has statutory duties or powers neither automatically creates nor automatically destroys a potential duty of care [48] – [49], [53], [87], [88].

Looking first at HXA's claim, an assumption of responsibility did not flow from the LA's internal decisions to investigate, seek legal advice or undertake keeping safe work. Nor did it flow from carrying out – or failing to carry out – such decisions. These were merely preparatory steps ahead of potentially applying for a care order [93] – [95], [101].

In respect of YXA, the provision by the LA of temporary respite care to YXA did not mean that the LA assumed responsibility to use reasonable care to protect YXA from abuse in his home. Whilst there was some delegation of parental responsibility for the time during which YXA was being accommodated by the LA, YXA's parents retained parental responsibility for him, and the LA had a statutory duty to return YXA to his parents. It was not alleged that there was a significant change in the situation in YXA's home during the periods of respite

care. There could therefore be no assumption of responsibility when YXA was returned to that same situation [36], [96] – [100], [106] – [108].

Although no relevant assumption of responsibility was established in these cases, it is possible for a local authority to assume responsibility to protect a child from harm, in respect of its social work functions. Such assumptions of responsibility are not restricted to circumstances in which the local authority has obtained a care order in relation to the child. Unlike claims of misrepresentation giving rise to economic loss, there does not need to be “specific reliance” by a child on something that the local authority said or did in order to establish that the local authority assumed responsibility towards them [57], [106] – [108].

References in square brackets are to paragraphs in the judgment.

NOTE:

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)