

Local Authority Liability for Negligent Advice Causing Psychiatric Injury

Posted On: 15/11/2022

Author: Georgina Cursham

The past decade has seen incremental expansion in the scope of the duty of care imposed on public authorities, from the imposition of vicarious liability in *Armes v Nottingham City Council* [2018] AC 355 to the confirmation that there is no public interest special immunity for police in *Robinson v Chief Constable of West Yorkshire Police* [2018] AC 736.

The first instance decision in *Wokingham Borough Council v Arshad* appeared to extend a local authority's duty of care for negligent advice given by an employee in connection with its statutory duties. The decision has however been successfully appealed by the Council before Bourne J (see [2022] EWHC 2419 (KB)), whose judgment may be found [here](#). This blog considers the impact of the High Court's decision.

The Facts

Mr Arshad was a hackney carriage driver, licensed by the Council. Whilst looking for a new car to be licensed for hire, he contacted the Council for informal advice as to whether a Ford Galaxy would comply with the Council's licensing requirements for wheelchair accessibility. A council employee informed him by email that such a vehicle would be suitable. Unfortunately, it was not.

Shortly after licensing Mr Arshad's new Ford Galaxy the Council suspended the licence on the grounds that the vehicle did not have sufficient headroom for a wheelchair user.

Mr Arshad converted his hackney carriage licence to a private hire vehicle licence. But he suffered loss of livelihood and status, which led to a mild/moderate Depressive Disorder. He brought a claim against the Council for race/religious discrimination, negligence and breach of duty in the carrying out of the Council's statutory licensing duties. He sought damages for various financial losses and psychiatric injury, along with aggravated and exemplary damages.

First Instance Decision

Sitting in the County Court at Oxford, HHJ Melissa Clarke allowed the claim in negligence only and awarded general damages of £42,500 for psychiatric injury. Applying *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465, she held that the Council voluntarily assumed responsibility for the reasonably foreseeable consequences of its employee's negligent misstatement.

Appeal

Applying the three-stage test in *Caparo Industries plc v Dickman* [1990] 2 AC 605, Bourne J held that a duty of care would arise if:

1. it was reasonably foreseeable that negligent advice would cause Mr Arshad harm of the kind which he suffered;
2. there was a relationship of proximity between him and the Council; and
3. it was fair, just and reasonable to impose a duty on the Council to take care to avoid causing that kind of harm.

The parties agreed that there was the requisite degree of proximity between Mr Arshad and the Council, leaving questions (1) and (3) for determination on appeal.

Liability for Advice Given in Connection with Statutory Duties

In a helpful review of case law relating to the duties of public authorities, Bourne J reminded himself that in considering a novel duty of care:

"[t]he Court must proceed cautiously, extending the scope of the duty of care incrementally".

Despite the need for caution, Bourne J confirmed that a local authority is not exempt from liability merely because advice has been given by employees carrying out their statutory duties.

It was fair, just and reasonable to impose a duty of care to avoid the reasonably foreseeable economic loss which would flow from the Council's negligent advice to Mr Arshad.

That left the question of whether there was a duty to avoid causing psychiatric harm and whether such harm was reasonably foreseeable.

Liability for Psychiatric Injury

Bourne J approached the question of reasonable foreseeability of harm in line with the case law and policy considerations relating to secondary victim and stress at work claims.

Whilst the special control mechanisms applicable to secondary victims are not necessarily engaged in an employment context, the starting-point is that it would be exceptional for an apparently robust employee, with no history of any psychiatric ill-health, to develop a depressive illness as a result of even a very serious setback at work (*Yapp v Foreign and Commonwealth Office* [2015] IRLR 112; *Hatton v Sutherland* [2002] ICR 613).

Since the Council was unaware of any personal characteristics of Mr Arshad which might have rendered a psychiatric injury particularly foreseeable, the question was whether there was a real risk of such injury in a person of reasonable fortitude.

Bourne J concluded:

“Whilst any serious setback may be capable of causing a degree of psychiatric harm to anyone, psychiatric injury in this case was not so reasonably foreseeable as to make it appropriate for a local authority, giving discretionary pre-application advice on a licensing matter, to owe a duty of care not to cause pure psychiatric harm”.

The Council’s appeal was allowed and the claim dismissed.

Ancillary Matters

By way of *obiter dicta*, Bourne J declined to interfere with the trial judge’s admittedly generous damages award.

Also of interest is that, despite this being a 'mixed' claim for damages for personal injury along with other causes of action, which were unsuccessful at first instance, Bourne J refused to set aside the Claimant's QOCS protection, holding that in all the circumstances it would not be just to permit any enforcement of the Council's costs order.

Conclusion

This case serves as a useful reminder of two central principles:

1. When public officials give advice, they may, depending on the circumstances, owe a duty of care and be liable for economic loss caused by a negligent misstatement.
2. In a claim for pure psychiatric loss, a claimant must surmount the high bar of showing some specific susceptibility on his part, or that the situation resulting from the negligence was so inherently stressful that psychiatric illness was a generally foreseeable consequence.

Downloaded From:

<https://ropewalk.co.uk/blog/local-authority-liability-for-negligent-advice-causing-psychiatric-injury/>