



Association of Child Abuse  
Lawyers  
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*The Association of Child Abuse Lawyers (ACAL) provides practical support for survivors and professionals working in the field of abuse. Formed 14 years ago, ACAL maintains a telephone help line and web site presence to sign-post survivors of abuse to lawyers who have the expertise and experience to assist them in obtaining the redress to which they are entitled. ACAL also campaigns in this area, and provides training, a mentoring service for members, access to data bases and an information exchange to members to assist them in their work. ACAL's membership is made up of solicitors, barristers, psychiatrists and social work experts who are all specialists in this field.*

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### Latest Case Law from the Association of Child Abuse Lawyers

#### **Birmingham City Council v AG, IA, JA 2009 EWHC 3720 (Fam)**

- **Reported:** EWHC 3720 (Fam)
- **Year:** 2009
- **Court:** High Court

#### **FACTS:-**

This was an application by Birmingham City Council for a care order under section 31 of the Children Act 1989 in relation to five children. The proceedings arose out of the death of a sixth child of the family shortly after her seventh birthday. This child had starved to death. Each of her siblings were malnourished and they had also been beaten.

AG was the mother of the children. IA was the father. By the time of the child's death, AG and IA had long since separated. JA was living in the former matrimonial home with AG.

#### **HELD:-**

Mrs Justice King considered the judgment in the case of **Re B (Children) [2008] UKHL 35** where the court said that the standard of proof in finding the facts necessary to establish the threshold under Section 31(2) or the welfare considerations in section 1 of the 1989 Act was the simple balance of

probabilities. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts.

King J considered JA's history. He had been born in 1978, one of five children and had been raised in harsh and punitive circumstances. His father was convicted of the manslaughter of one of his siblings. He was suspected of stealing food at school and acquired a number of driving offences. In 1996 he converted to the Muslim faith. He had a strong belief in evil spirits.

JA met IA in the local mosque and they became friends before falling out over AG.

AG and IA had converted to the Muslim faith and they entered into an Islamic marriage in about 1995. In 2001, IA married a second wife and by 2004 his relationship with AG was over. In 2007, JA became involved with AG and moved into her house. At this point, he began to dominate her and her family.

AG had six children under ten years of age, and she was finding it increasingly difficult to control them. Her own weight had ballooned and she weighed 20 stone. She introduced a healthy eating diet which was designed to help her lose weight, and which she also imposed on her children. She also allowed them to live in squalid conditions as well as using physical chastisement and humiliating punishments against them. However up until 2007, they had experienced good care and a contented home life. Everything changed after September 2007.

King J considered the events that occurred from January to December 2007. There were reports from the children's schools that AG's family had an unusual attitude to food and that the mother had instructed the school to cut down on the children's food. It appeared from the children's evidence given to the police that when JA moved in with their mother, he began physically abusing the children. AG began disengaging with the school, which was attended by three of her children. A meeting took place between the school and AG in December 2007, in which AG was extremely confrontational. The mother withdrew her three children from the school shortly thereafter and she withdrew another child from the school's nursery. She attempted to teach her children at home but by March 2008, these attempts had been abandoned.

From December to May 2008, AG's children continued to suffer the same harsh regime. Two of her children continued to attend school. Although AG and JA continued to eat perfectly normally, they locked the door to the kitchen and continued to starve and beat the children, as well as subjecting them to various cruel and humiliating punishments.

One of the children, K became very ill indeed but neither JA nor AG sought medical help. Eventually she contracted pneumonia as a result of malnutrition and died on the 17<sup>th</sup> May 2008.

On the 19<sup>th</sup> December 2007, the school from which the three children had been withdrawn made a referral to social services. The social worker dealing with the referral, Miss C said that it did not warrant a visit to the family and that any such visit would prejudice the good relationship between the school and the family. However the deputy head teacher of the school actually visited the family home herself and persuaded AG to come to the school for a meeting. Again social services was contacted but the social worker said that if there was a problem, the school should contact the police to do a "safe and well check".

On the 29<sup>th</sup> December 2007, the police attended the family home. The mother was angry about their presence, but called K (the child who died) to the door. She appeared well and the police did not ask to see any of the other children.

As a result of AG's announcement that she was removing her children from the school, a meeting was held on the 28<sup>th</sup> January 2008 at the school, where again the teachers expressed their concern. On that day, an educational social worker attended the family home but no-one answered the door. A telephone conversation took place on the 30<sup>th</sup> January 2008 took place between the educational social worker and the mother, as a result of which another referral was made to social services. The social worker handling the enquiry, Miss C recommended the carrying out of what is known as a Common Assessment Framework assessment. This is low scale intervention where local agencies work with families in order to resolve issues.

On the 8<sup>th</sup> February 2008, two professionals from the local education authority visited the home of AG. The children's education at home was discussed and during this meeting, it was agreed that AG would send teaching plans to the authority. They did not see the children.

No plans were forthcoming and on the 7<sup>th</sup> April 2008, the local education authority again wrote to AG. The education professionals attended the property on the 16<sup>th</sup> April 2008 but there was no reply. This visit was not followed up.

Meanwhile on the 31<sup>st</sup> January Miss C and her manager reconsidered the referral that had been made to social services. They said that they would carry out an initial assessment on AG's family. This would involve a visit to the family.

The case was allocated to a social worker by the name of Miss G. She mistakenly thought that whilst an Initial Assessment did mark the acceptance of social services of a referral, it still required the consent of the parents before any enquiries could be made about the children from third party agencies such as the school and the health services. In fact no such consent was required although parents would be asked to cooperate with the assessment as a whole.

Miss G then went on annual leave and did not return until the 18<sup>th</sup> February 2008. On that day she then wrote to the mother, telling her that a referral had been received from educational welfare and saying that a visit would be made on the 21<sup>st</sup> February 2008 together with a new educational social worker. When they did visit, AG the mother would not allow them into the house. Crucially,

Miss G the social worker thought that the reason for her visit was educational rather than related to child protection issues.

However AG did bring three of her children to the door although she refused them entry to the house. The social workers did not engage with the children. Miss G did ask the mother to sign a consent form allowing enquiries to be made of third parties, but she refused. A visit was agreed for the following day, but AG later cancelled this. Miss G discussed the matter with her manager, and they agreed not to visit again as in their view, the reason for the referral was educational rather than one of child protection.

King J said that this visit was insufficient for the purposes of even an initial assessment. She referred to The Department of Health's Framework for Assessment known as "The Lilac Book." The only mandatory enquiry was to see the children. As it was, the Initial Assessment was not completed but simply shelved without even speaking to the children's schools from where the anxieties had stemmed and the referral had been made. Instead the case was designated for closure.

King J said that the death of the child in question was preventable. Initial and core assessments should have been carried out according to the Lilac Book. Paragraph 1.23 of that guidance set out the principles which should guide inter-agency, inter disciplinary work with children in need. Further guidance at paragraph 1.51 talked about gathering information and making sense of it with other professionals.

King J said that it should have clear to social services as to what their role and that of the educational welfare services were when they received the initial referral. The appropriate course for the local authority should have been to consider a section 47 Children Act enquiry. As a result of each professional carrying out his or her own duties in isolation, information was not passed on and relevant connections were not made.

King J said that a Serious Case Review was being carried out and it was no part of the court's function to second guess what that Review might say.

K's death was caused by and was the responsibility of AG and JA.

The threshold criteria was satisfied in relation to each of the children.

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## **R v D(N), P(A), U(S) Court of Appeal Criminal Division 2011**

- **Reported:** [2011] EWCA
- **Year:** 2011
- **Court:** Court of Appeal

## FACTS:-

D had been convicted on two counts contrary to the Sexual Offences Act 2003. P was convicted on two counts contract to the Sexual Offences Act 1956 and the Indecency with Children Act 1960. U was convicted of three counts contrary to the 1956 Act.

The issue before the Court of Appeal related to Section 10(1)(d) of the Criminal Justice Act 2003. That was whether, when a Defendant was charged with the sexual abuse of a child, evidence of possession of indecent photographs of children was capable of being admitted as bad character evidence to demonstrate a sexual interest in children.

## HELD:-

**The Court of Appeal** said that evidence of possession of indecent photos was not evidence that the Defendant demonstrated the practice of committing sexual abuse or assault. However proof of propensity was not limited to the commission of the same kind of offence but could include any evidence that made it more likely the defendant had behaved as charged. Therefore such evidence was capable of being adduced at trial to demonstrate a propensity for offences involving the abuse of children.

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## Jones and Lovegrove v Ruth and Ruth 2011

- **Reported:** [2011] EWCA Civ 804
- **Year:** 2011
- **Court:** Court of Appeal

The Claimants commenced proceedings against the Defendants in relation to works carried out to the Defendant's adjoining house. They sued for nuisance, trespass, personal injury and financial loss caused by negligence and also under the Protection from Harassment Act 1997.

The trial judge had found for the Claimants in trespass and nuisance. He awarded the Claimants £30,000 for loss of amenity and enjoyment and a further £45,000 for nuisance. He also awarded Ms. Jones £6,000 for harassment but did not award in terms any damages for the personal injury. He rejected the argument (which was not raised again on appeal) that personal injury damages should be awarded for nuisance and dismissed the claim in negligence on the basis that Ms. Jones had not proved that the injuries that she suffered were attributable to her seeing the damage to her property.

Ms. Jones appealed against the judge's refusal to award her personal injury damages in relation to the harassment claim.

## JUDGEMENT:-

**Lord Justice Patten** said that the trial judge had not explained why he had not made any personal injury award in relation to the harassment claim. He had later said that there was a requirement for the loss suffered to be reasonably foreseeable.

Section of the 1997 Act stated: -

*"(1) An actual or apprehended breach of section 1 may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question.*

*(2) On such a claim, damages may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment. "*

There was no comprehensive statutory definition of harassment. It might range from actual physical force or the threat of force to much more subtle but nonetheless intimidating conduct.

Patten LJ referred to the case of **Laing Ltd v Essa [2004] EWCA Civ 2** which indicated that the 1997 Act did not require foreseeability. He was not persuaded that foreseeability was required for an action based on harassment. There was nothing in the nature of the cause of action which called for further qualification in order to give effect to the obvious policy objectives of the statute, and consequently the trial judge was wrong to exclude an award of damages for personal injury based on an absence of foreseeability. The award made by the trial judge for loss of earnings was £115,000 and for pain and suffering was £28,750.

**Lord Justices Aikens and Arden** agreed.

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**Client Referral System:** ACAL receives many requests for help from survivors of abuse. Referrals are made to our panel of solicitors trained in the specialism of child abuse compensation cases. (panel membership only)

**Database of Institutions/Homes:** ACAL collects nationwide details of institutions and group actions against any organisation responsible for abuse. Providing central intelligence, to point solicitors and counsel in the right direction. Public funding is more likely to be available with the benefit of group generic evidence.

**Meetings:** ACAL organizes an annual workshop at which members can freely seek advice on this difficult side of law. Members can attend free of charge.

**Mentoring:** New members can receive mentoring from members of ACAL's Executive Committee who are experienced in child abuse compensation cases.

**Website:** All members of ACAL are listed in a private section of the ACAL website to encourage networking amongst members for both social and work purposes. The website also provides members with: lists of recommended

experts and counsel; a discussion forum; and information about public funding.

**ACAL Campaigns:** ACAL fights for the rights of its members and beneficiaries. Recent campaigns have included Care Court Fees, Time Limits and Legal Aid.

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