



**SHERIFF APPEAL COURT**

**[2023] SAC (Civ) 28  
GLW-A362-22**

Sheriff Principal D C W Pyle  
Sheriff Principal C Dowdalls KC  
Appeal Sheriff D Hamilton

**OPINION OF THE COURT**

delivered by SHERIFF PRINCIPAL D C W PYLE

in appeal in the cause

RIAD DJENNAS (AP)

Pursuer and Appellant

against

GLASGOW CITY COUNCIL

Defender and Respondent

**Pursuer and Appellant: Dailly (sol. adv); Dailly and Co. Solicitors  
Defender and Respondent: Byrne; Glasgow City Council Legal Services (Litigation)**

11 August 2023

**Introduction**

[1] This is an appeal from the sheriff's judgment which dismissed the appellant's claim against the respondent for damages due to an alleged breach of duty of care.

[2] The appellant alleged that the respondent had failed to comply with its duties under the Housing (Scotland) Act 1987 ("the 1987 Act"). Both parties accept that breach of a statutory duty is not, of itself, sufficient to found a basis for a private law right of action against a public authority. The respondent challenged the appellant's pleadings at debate and argued that the only breach of duty of care pled was that the respondent had failed to

exercise reasonable care and diligence in discharging its homelessness functions and duties under the 1987 Act. In the absence of any averments that the appellant had either (i) assumed responsibility to the appellant or (ii) created a source of danger to the appellant, there was no relevant case pled. The appellant submitted that he had averred a relevant case that the respondent had assumed responsibility for wrongful advice it gave and actions it undertook. The sheriff found that the appellant had pled no such averments. In the absence of those, his claim was irrelevant and the action fell to be dismissed.

[3] A subsidiary issue is whether the sheriff erred in the exercise of her discretion by refusing to allow a claim for just satisfaction to proceed under section 7(5)(b) of the Human Rights Act 1998 (“the 1998 Act”).

### **Factual Background**

[4] The factual matrix averred by the appellant is disputed; however, for the purposes of the debate and this appeal his pleadings are taken to be *pro veritate*.

[5] The appellant was evicted from his tenancy on 9 April 2019 and became homeless. He attended at the respondent’s offices to apply for homeless accommodation on 23 April 2019 and again in May 2019. The respondent refused to assist him and advised him on both occasions that it did not have a legal duty to accommodate him. The respondent did not complete a homeless application and did not conduct its own inquiries in order to satisfy itself that the appellant was a homeless person. The appellant avers that the respondent appeared to rely upon an erroneous decision provided to it by the Department for Work and Pensions that the appellant was not entitled to have recourse to public funds due to his immigration status.

[6] The appellant avers that the respondent committed two separate breaches of statutory duty on 23 April 2019 and in May 2019. These were (i) a failure to make an independent enquiry as to whether the appellant was the subject of immigration control; and (ii) a failure to issue a written decision notifying the appellant of its decision on the question as to whether it deemed him to be homeless or threatened with homelessness. These requirements were imposed on the respondent by virtue of sections 28, 29 and 30 of the 1987 Act.

### Legislation

[7] By virtue of sections 28, 29 and 30 of the 1987 Act, the respondent has the following statutory duties imposed upon it:

**28.— Inquiry into cases of possible homelessness or threatened homelessness.**

(1) If a person (“an applicant”) applies to a local authority for accommodation, or for assistance in obtaining accommodation, and the authority have reason to believe that he may be homeless or threatened with homelessness, they shall make such inquiries as are necessary to satisfy themselves as to whether he is homeless or threatened with homelessness.

...

**29 Interim duty to accommodate.**

(1) If the local authority have reason to believe that an applicant may be homeless they shall secure that accommodation is made available for his occupation—

(a) pending any decision which they may make as a result of their inquiries under section 28;

(b) where the applicant has, under section 35A, requested a review of a decision of the authority, until they have notified him in accordance with section 35B of the decision reached on review;

(c) where, by virtue of a decision referred to in paragraph (a) or (b), the authority have a duty under section 31 to secure that accommodation of a particular description becomes available for the applicant's occupation, until such accommodation becomes available.

...

**30 Notification of decision and reasons.**

(1) On completing their inquiries under section 28, the local authority shall notify the applicant of their decision on the question whether he is homeless or threatened with homelessness.

### **The alleged duty of care**

[8] The appellant avers the following at article 6 of condescendence:

“...The Pursuer sought homeless assistance from the Defender on two separate occasions on the 23<sup>rd</sup> April 2019 and then again sometime in May 2019. The Pursuer was a homeless person as defined by section 24 of the 1987 Act. The Defender failed to complete a homeless application with the Pursuer on both these homeless presentations and failed to conduct their own inquiries in order to satisfy themselves, as per section 28 of the 1987 Act, as to whether the Pursuer was a homeless person. With reference to Section 30 of the Act, on completion of the Defender’s inquiries under Section 28, the Defender also had a legal duty to notify the Pursuer in writing of their decision on the question as to whether he was deemed to be homeless or threatened with homelessness. The Defender refused to assist the Pursuer, and the Pursuer was verbally advised on both occasions that the Defender did not have a legal duty to accommodate him. The Defender’s refusal to accommodate and conduct their own enquiries was based on the wrongful decision making of the Department for Work and Pensions that the Pursuer had no recourse to public funds. The Defender failed to provide a written response to the Pursuer, as per section 30 of the Act, for their decision to refuse him homeless assistance and by failing to do so, denied the Pursuer of his legal right to seek a review of that decision.”

[9] He then avers the following duty was owed by the respondent at article 9 of condescendence:

“The defender owed the pursuer a reasonable duty of care at Scots common law. That duty required the defender to exercise reasonable care and diligence in discharging its homelessness functions and duties to the pursuer under the 1987 Act...”

### **The sheriff’s judgment**

[10] In relation to whether a duty of care was owed, the sheriff held that it was not. The appellant had argued that his position with the respondent was analogous to the patient in *Darnley v Croydon Health Services NHS Trust* [2019] AC 831. The sheriff found that *Darnley* had no application to the appellant’s claim and that it did not fall into an existing established category giving rise to a common law duty of claim.

[11] The sheriff considered that for a viable case of breach of duty of care to be pled the appellant had to aver that the respondent had either: (i) assumed responsibility above and

beyond the statutory duties imposed on it or (ii) created a source of danger to the appellant. The sheriff considered that the only duties pled and relied upon by the appellant were breaches of the statutory duties contained in the foregoing sections of the 1987 Act. As to whether the respondent had created a source of danger, the averments were insufficient to provide a basis for, or even the inference of, an assumption of responsibility by the respondent for the appellant's welfare or safety. The sheriff found that it would not be fair, just and reasonable to impose the duty of care upon the respondent.

[12] Separately, the sheriff refused to exercise her discretion to allow the claim under section 7 of the 1998 Act on the basis it would not be equitable to do so.

#### **Appellant's submissions**

[13] The solicitor advocate for the appellant submitted that the sheriff had erred in her approach. The appellant had pled a relevant case for breach of duty of care by the respondent. There was no factual basis for the sheriff to find that the respondent did not assume any responsibility for its wrongful advice and actions. The respondent owed him a reasonable duty to take care in the information and advice given to the appellant and ought to have investigated and considered his circumstances before giving him wrongful and negligent information and advice which rendered him destitute and homeless.

[14] The sheriff erred in finding that the appellant's circumstances were not analagous to those in *Darnley*. It would be contrary to public policy to hold that a local authority was not responsible for the information and advice it provided to a vulnerable person who presented to them at risk of destitution, whereas other public bodies were responsible, such as the patient who presented to the hospital in *Darnley*. As a matter of fact and law the respondent did assume responsibility for the information and advice provided.

[15] Separately, even if the sheriff was correct in finding that the appellant's claim did not fall within the scope of recognised delictual reasonable duties of care, she erred in failing to consider or determine whether it would have been fair, just and reasonable to impose such a reasonable duty of care.

[16] The sheriff erred in her refusal to allow the appellant's late claim for just satisfaction under the 1998 Act. The reason given for refusal was that it would not be equitable to do so; however, no explanation or reason was given.

### **Respondent's submissions**

[17] Counsel for the respondent relied upon Lord Reed's speech in *N v Poole Borough Council* [2020] AC 780 at paragraph 65 for the proposition that no private law right of damages is conferred by breach of a statutory duty. A public authority would be under a common law duty to protect an individual from harm only in circumstances where the principles applicable to private individuals or bodies would impose such a duty. Lord Reed provided examples of where a local authority has created a source of danger or has assumed a responsibility to protect a pursuer from harm.

[18] There were no averments that the respondent had assumed responsibility. The appellant had in fact averred that the respondent refused to assist him. That being so, there could not be any assumption of responsibility. Nor were there any averments that the respondent had created a source of danger such that a duty of care could be imposed on it. The only duty pled was that the respondent had to exercise reasonable care and diligence in discharging its homelessness functions and duties under the 1987 Act. In the absence of any other duty being pled, the sheriff was correct to find that the appellant's claim was not within the scope of recognised delictual reasonable duties of care.

[19] On the claim for just satisfaction, the sheriff exercised her discretion to refuse to extend time on the basis that the appellant was seeking to introduce his claim under the 1998 Act a long time after the commencement of the proceedings. In addition, under reference to *Prior v Scottish Ministers* 2020 SC 528 at para [37], the sheriff considered the importance of procedural deadlines being adhered to. Further, the appellant had not provided any explanation, affidavit or chronology to explain why his claim for just satisfaction was introduced only on 2 August 2022. The sheriff had not erred.

### **Decision**

[20] It is accepted by both parties that no private law right of damages is conferred by the breach of a statutory duty itself. That position is uncontroversial and has been explained by the House of Lords and the Supreme Court in a number of cases: *Stovin v Wise* [1996] AC 923; *O'Rourke v Camden London Borough Council* [1998] AC 188; *Gorringe v Calderdale Metropolitan Borough Council* [2004] 1 WLR 1057; *Robinson v Chief Constable of West Yorkshire Police* [2018] AC 736 and *N v Poole Borough Council* [2020] AC 780. For the purposes of this appeal it is sufficient to cite Lord Reed's detailed review of the preceding case law concerning the liability of public authorities in *N v Poole Borough Council* at para [65]:

"It follows (1) that public authorities may owe a duty of care in circumstances where the principles applicable to private individuals would impose such a duty, unless such a duty would be inconsistent with, and is therefore excluded by, the legislation from which their powers or duties are derived; (2) that public authorities do not owe a duty of care at common law merely because they have statutory powers or duties, even if, by exercising their statutory functions, they could prevent a person from suffering harm; and (3) that public authorities can come under a common law duty to protect from harm in circumstances where the principles applicable to private individuals or bodies would impose such a duty, as for example where the authority has created the source of danger or has assumed a responsibility to protect the claimant from harm, unless the imposition of such a duty would be inconsistent with the relevant legislation."

[21] In *N v Poole Borough Council* at para [82] Lord Reed found that the claimant's particulars of claim failed to disclose an arguable claim:

“...Nevertheless, the particulars of claim must provide some basis for the leading of evidence at trial from which an assumption of responsibility could be inferred. In the present case, however, the particulars of claim do not provide a basis for leading evidence about any particular behaviour by the council towards the claimants or their mother, besides the performance of its statutory functions, from which an assumption of responsibility might be inferred...”

[22] The appellant in his pleadings does nothing more than assert a parallel common law duty that emerges from underneath the statutory duty to inquire into homelessness and for a local authority to inform the individual of its decision following that inquiry. As in *N v Poole Borough Council*, the appellant has failed to make averments about any particular behaviour by the respondent towards him, besides the performance of its statutory functions. The averments that have been pled do not provide a basis on which an assumption of responsibility by the respondent can be established. In the absence of such averments, the sheriff had no alternative but to dismiss the claim for breach of duty of care.

[23] The respondent's second ground of appeal is that the sheriff erred in failing to consider or determine whether it would have been fair, just and reasonable to impose a reasonable duty of care on the respondent. This court has previously stated the process to be undertaken in ascertaining whether a new duty of care should be recognised - in *Commodity Solution Services Ltd v First Scottish Searching Services Ltd* [2019] SC (SAC) 41 at para [31]:

“...the task for a court, faced with a question as to whether or not a duty of care exists, is as follows. First, the court should, by identifying the legally significant features of the case before it, and of previous cases, ask itself whether the case is novel. If the answer to that is no, then, second, the court should decide the case in accordance with established principles, without resorting to *Caparo*. However, if the case is novel, then, third, the court must consider which of the previous cases provides the closest analogy. Having done that, then, fourth, the court must decide whether to extend the law, so as to provide for a duty of care in the case before it,

taking care to maintain the coherence of the law and to avoid inappropriate distinctions. In carrying out this task, the court must weigh up the reasons for and against imposing liability and ask whether the imposition of a duty of care would be just and reasonable.”

[24] The sheriff approached the task by asking whether the proposed duty of care was novel. She considered it was; however, she decided it was inappropriate to extend the law so as to provide for the duty of care which the appellant sought. We conclude, like the sheriff, that a new duty of care should not be recognised; however, we do so for different reasons. Like the sheriff, we agree that the appellant’s claim is not analogous to *Darnley*. If his claim is analogous to any prior case it is that made by Mr O’Rourke in *O’Rourke*. Mr O’Rourke alleged that the local authority owed him a duty under the Housing Act 1985 to secure that accommodation was made available for him. That argument was dismissed by the House of Lords. The position is similar in this appeal. To that extent, the appellant’s claim is not novel. There was therefore no need for the sheriff to consider whether a new duty of care was required. It was sufficient for her to proceed to decide the case in accordance with established principles.

[25] The third ground of appeal is whether the sheriff erred in law in refusing to exercise her discretion to extend the one year time limit to allow the appellant’s claim for just satisfaction under the 1998 Act to proceed to proof. The sheriff refused to extend time given the length of time that had elapsed since the commencement of proceedings. She had also considered the Lord President’s dicta in *Prior v Scottish Ministers* at para [37]:

“...Rules of procedure are an important element in the judicial system. It is not a question of efficiency or speed trumping fairness and justice. The need to determine cases expeditiously and to achieve finality is not a separate or subordinate consideration to the interests of justice. Expedition and finality are not opposed concepts to fairness and justice but are integral parts of them (see *Toal v HM Advocate*, Lord Justice Clerk (Gill), para 107).”

[26] We do not consider there was any error of law by the sheriff in the exercise of her discretion. The claim for just satisfaction was introduced by adjustment on 2 August 2022. No explanation was provided by the solicitor advocate for the delay in advancing the claim. In the absence of any explanation, either by way of averment or affidavit, the sheriff was entitled to refuse to extend the time limit.

### **Disposal**

[27] We refuse the appeal and adhere to the sheriff's interlocutor. We find the appellant liable to the respondent in the expenses of the appeal; however, in the event of the appeal being refused, we understand that a motion will be enrolled by the appellant to modify expenses to nil, which motion is unlikely to be opposed.