

BHATT MURPHY SOLICITORS
PRESS RELEASE
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(FOR IMMEDIATE RELEASE)

MET DEGRADES DISABLED BOY

A High Court Judge has today found that Metropolitan Police officers subjected a sixteen year old boy with severe autism, learning disabilities and epilepsy to assault and battery, unlawful disability discrimination, false imprisonment and multiple breaches of the Human Rights Act¹ by forcing him into handcuffs and leg restraints during a school trip to Acton Swimming Baths in West London on 23 September 2008. This is the first judgment in this jurisdiction in which police officers have been found to have subjected a member of the public to inhuman or degrading treatment² and to unlawful disability discrimination³.

The boy, who has a mental age of a five year old, became fixated with the water as a result of his autism and was reluctant to leave the pool. Against the wishes of his trained carer, the pool staff called the police to remove him, although there was no suggestion that he had committed any wrongdoing. When police officers attended they almost immediately took hold of the boy causing him to jump away from them and into the water. Officers then used high level force to remove him from the pool. The Commissioner of Police for the Metropolis accepted during the trial before Sir Robert Nelson in December 2011 that the force used by his officers caused the boy Post-Traumatic Stress Disorder and exacerbated his epilepsy. The trial centred on whether his officers should have considered options short of restraint in order to facilitate the boy's removal. The Claimant argued that the officers were obliged as a matter of law and humanity to employ a number of other available options. The Commissioner argued that there were no such options and that such high level physical restraint was justified, including under the Mental Capacity Act 2005. This was notwithstanding the fact that by the time of his removal from the water the boy was in the shallow end of the pool with a number of lifeguards.

The judgment has resolved those competing arguments entirely in favour of the Claimant, who has been awarded £28,250.00 in damages plus interest and costs. Sir Robert Nelson also took the unprecedented step of issuing a *declaration* that the Commissioner's officers subjected this young man to inhuman or degrading treatment and unlawful disability discrimination. This is the first declaration of its kind in this jurisdiction and deeply embarrassing for Mr Hogan-Howe who has refused to accept the Court's judgment and has sought permission to appeal. He has also declined to apologise to the young man or to accept that his officers should treat people with disabilities any differently if this kind of situation were to reoccur.

¹ Breaches of Article 3 (prohibition on inhuman and/or degrading treatment); Article 5 (right to liberty); and Article 8 (right to bodily integrity) of the European Convention on Human Rights (ECHR), pursuant to the Human Rights Act.

² Contrary to Article 3 of the ECHR

³ Contrary to the Disability Discrimination Act 1995 (since replaced by the Equality Act 2010)

The judgment acknowledges that it was a difficult situation for the officers, especially as they had received no training on autism⁴, and that they were “in general” not ill-intentioned. However it makes grave criticisms of their approach in this case, including as follows:

“[162]... their responses were over-hasty and ill-informed, and...escalated to the point where a wholly inappropriate restraint of an epileptic autistic boy took place.....”

“[145]...restraint was in the circumstances hasty, ill-informed and damaging to ZH. I have found that the restraint was neither lawful nor justified.”

The Judge also found that the officers failed to:

- Seek and respond to advice from the Claimant’s carers;
- Allow the Claimant an opportunity to move away from the poolside in his own time before entering the water; and to leave the water by himself after he had entered the water;
- Allow the Claimant to receive reassurance from his carers;
- Recognise that a calm, controlled and patient approach should have been taken at all times; and
- Recognise that the use of any force should have been an option of last, not first, resort.

The judgment concludes by highlighting the need for autism awareness within public services, which the Claimant’s family has been calling for since 2008. The Commissioner expressed strong objections to this proposal through his representatives at today’s hearing and it appears that he continues to decline to provide any autism awareness training to his officers. This is despite the serious injuries sustained by the young person in this case and the fact that an estimated 1 in 100 people in the UK are on the autistic spectrum⁵.

The Claimant’s **father**, who cannot be identified for legal reasons, said as follows:

“I hope this judgment means that disabled people can expect to receive more humane treatment from Metropolitan Police officers than my son did. Sadly this seems impossible while the Commissioner is still trying to justify this ill-treatment and refusing to provide training or an apology”.

The Claimant, who cannot be identified for legal reasons, is represented by **Tony Murphy** of **Bhatt Murphy** who said as follows:

“Mr Hogan-Howe must seize the opportunity presented by this landmark judgment to reform the way his officers treat people with disabilities. This disturbing case is not an isolated example. The Commissioner must put an end to the widespread practice of using force as a first resort, including when officers are dealing with disabled children.

⁴ See paragraph [62] of the judgment

⁵ National Autistic Society

Note to Editor

- A copy of the approved judgment will be made available on Bhatt Murphy's website as soon as it is received from the court on 14 March 2012.
- There is a court order in place prohibiting the publication or broadcast of the Claimant's identity, or that of his family, in view of his disabilities. He can be referred to for the purpose of media coverage as "Josh" and his father as "John".
- Any requests for interviews after the hearing should be emailed please to t.murphy@bhattmurphy.co.uk
- The Claimant's barrister is Heather Williams QC of Doughty Street Chambers and his case was funded by the Legal Services Commission.
- This judgment is also believed to be the first occasion on which a police force has sought to defend officers' use of force by relying on the Mental Capacity Act 2005, which came into force between April and October 2007.
- This judgment will follow the recent publication of two reports by the Equalities and Human Rights Commission expressing concern regarding the treatment of people with disabilities in the UK: The Human Rights Review and The Disability Harassment Inquiry (following the death of Fiona Pilkington and her daughter Francesca) www.equalityhumanrights.com
- Judgment will also follow the introduction of the Autism Act 2009 in November 2009 and its associated statutory guidance in December 2010. This legislation places legal duties on local councils and health services (though not as yet police services) to recognise the needs of adults with autism in England www.autism.org.uk.
- The Claimant and his family are very grateful for all the support he received over many years from the Sybil Elgar School and the National Autistic Society.

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