

LOCAL AUTHORITY LAWYERS – WHAT DO THEY REALLY THINK OF CHILDREN WITH SEN AND THEIR FAMILIES?

A busy weekend on social media has thrown an unwelcome light on the attitudes of a solicitors' firm regularly instructed by local authorities in SENDIST tribunals, Baker Small. However, whilst it is rare to see anything so overt, for many of us the events of the last weekend have merely confirmed what we already knew.

Problems started with an initial Tweet saying:

Great ABA Trib win this week ... interesting to see how parents continue to persist with it. Funny thing is parents think they won ;)

That Tweet on its own was bad enough. In effect the firm was poking fun at the parents for being so naïve as to think they had done something that would help their child. It would be inappropriate for any solicitor to post a gloating, triumphalist tweet of this nature; but when it is directed at the family of a vulnerable child, it tips over into the offensively unprofessional.

A number of people responded to upbraid the firm on their tweet, only to attract further mocking before they were blocked. A lawyer from the Information, Advice and Support Services Network, Daisy Russell, posted in response to the first Tweet:

Probably not that funny on reflection?

Some lawyers might have been brought up short by a measured reply such as that from a fellow professional. However, BS replied:

Whenever someone thinks they have won and they have conceded 90% of their case, it does make me smile ...

Not a great idea for a lawyer to announce that he find a “victory” over the parents of a disabled child funny and a cause for smiling. But BS didn't stop there. In response to a tweet noting that BS were “having a very bad night on Twitter” they said:

What the mob LOL! Please, sticks and stones and all that LOL!

Then there was this:

Some great tweets received today from people who just see a one sided argument ... just shared them with my cat ...

This was followed by a picture of a cat apparently yawning or laughing. In response, a parent posted:

It's funny when you can go home & forget, parents of children with SEN live with it 24/7. We seek collaboration not confrontation.

BS replied:

When parental solicitors champion their "wins", they are lauded on twitter. Double standards, I'm afraid.

This may have been triggered by the fact that BS has recently lost two significant cases in the Upper Tribunal; unsurprisingly, the law firm and charity involved announced the results, because they were significant in legal terms. What BS seemed unable to understand, however, is that there is a significant difference between a firm noting its involvement in high-profile case and another firm gloating about, allegedly, pulling the wool over parents' eyes in the First-tier Tribunal and thereby depriving a child of the support the parents are advised the child needs – let alone announcing that they find it funny.

Another lawyer who blogs as Nearly Legal twice posted warnings that the tweets were ill-advised and was duly ignored; ultimately, after a BS tweet saying

SRA referrals and anti-Baker Small posts ... the emotive world of SEN (one sided) that is.

he posted:

Oh my. Stop this now. Before you do yourself serious damage

The only response to that was that his blocking from BS' twitter feed. BS's blatant sneer at pesky parents getting emotive about their disabled children was possibly the most offensive of the night. But BS carried merrily on:

Crikey, had a great "win" last week which sent some parents into a storm! It is always a great win when the other side thinks they won!

As a respondent correctly commented:

Even funnier when you screw a vulnerable child out of an education altogether I expect. It's not about parents or LAs, but kids.

When another commenter requested details of how to complain formally, she received this for her pains:

Dear oh dear complaints policy is on our website. Can dish it out but not take a different opinion ;)

The problem with that, as she pointed out, was that there was good reason to believe that the person named as the partner responsible for dealing with complaint was the person publishing the Tweets.

And then there was the delightful photograph of a swimming pool (with the implication that that was where the Tweeter was sitting) saying:

Shame about the football but nice to be relaxing on twitter at the end of a busy week.

Distinct echoes of “Crying all the way to the bank with money made out of children with SEN” there.

The Morning After the Night Before

The passage of time – and perhaps the widespread sharing of a letter to the Solicitors’ Regulation Authority - brought about a marked change of tone:

Some tweets were sent out yesterday which were inappropriate and unnecessary. They have been removed and I apologise for any offence.

This was followed by further apologies and a claim that this was “**an error of judgment**”. Ultimately a letter from the Managing Partner was posted with (to quote the great John Finnemore) a masterly use of the passive voice:

It is with regret that yesterday, tweets were sent from us which were not acceptable regardless of the context

and further regrets and apologies were expressed. None of this unfortunately undoes the very real distress and shock expressed by numerous parents in reaction to the tweets in question.

What does all this mean for families and local authorities?

The sad thing about all this is that it came as little surprise to parents who have had dealings with the firm concerned. Our experience is that the attitudes displayed in the series of tweets concerned are regularly displayed (if not as overtly) when BS act for local authorities. Parents regularly tell us that an already stressful experience is made several times more stressful when dealing with authorities who instruct Baker Small, whose attitude seems to be very much one of “win whatever the cost” whilst ignoring the child on whom the appeal is centred.

The SEN world is a small one. To our knowledge, the following are authorities which either currently instruct BS or have done so recently:

Buckinghamshire

Cambridge

Gloucestershire

Hammersmith and Fulham

Hertfordshire

Hillingdon

Kensington and Chelsea

Norfolk

North Yorkshire

There may well be more. One of those authorities presumably instructed BS in the case featuring in the infamous tweets and, we suspect, are now dealing with a very angry family who will have been able to identify the case with the greatest of ease. The LA has to maintain a relationship with that family as they will continue to be responsible for the education of the child in question and, probably for their social care. The parents could certainly be forgiven for finding it impossible to trust an LA whose representatives have been poking fun at them so publicly and gloating at their perceived “victory” in the appeal. Word is liable to get round amongst other families within that LA’s area, so the SEN Department’s job has just been rendered considerably more difficult. We would hope that that LA is now looking very closely at its agreement with BS.

And that should extend to other authorities. If they can breach one LA’s confidentiality, is any LA safe? How many parents are happy about paying council tax to an LA which is spending large amounts of money (generally in the hundreds of thousands according to online sources) on a firm which, in essence, is making it clear that it regards its responsibilities as a game to be played and won against “emotive” parents and their children.

It has to be acknowledged that the attitudes displayed are not unique to BS, and we are regularly told by parents of similar tactics being used by some tribunal representatives in other authorities. Parents of children with SEN already have more than enough on their plates without having to fight with the councils whose job it is to help them in order to secure adequate support; when that is exacerbated by aggressive and litigious tribunal tactics, the pressure on families can become near-unbearable.

We would suggest that there urgently needs to be a major rethink on a number of fronts. LAs who instruct outside solicitors should think long and hard about whether this is a justifiable use of council taxpayers’ money, or whether it would be better spent on doing their jobs properly. Too often we have to report on here experience of LAs blatantly failing to comply with their statutory duties and producing indefensible decisions to refuse to assess or issue an EHCP, or drafting grossly inadequate and unlawful EHCPs. Proper investment in the early stages of the process, including training of LA officers, would produce major savings in terms of reduced numbers of tribunal appeals. The Department for Education in its turn needs to review urgently the funds available to LAs to deal with SEN, and the training given to teachers and headteachers with regard to their own statutory responsibilities and the legal framework in which they are operating.

What can parents and carers do?

We would suggest that every parent who is concerned about BS’s twitter activity should consider sending a formal complaint to the Solicitors Regulation Authority (through the website <https://www.sra.org.uk/consumers/problems/report-solicitor.page#how-report-sra> or by post to Solicitors Regulation Authority, The Cube, 1999 Wharfside Street, Birmingham B1 1RN; or by email to report@sra.org.uk) It would be worth citing Principle 6 of the

Solicitors' Professional Code of Conduct which requires solicitors to **“behave in a way that maintains the trust the public places in you and in the provision of legal services”**. You can point out to them that you cannot use BS's own complaints system since it appears that the person being complained about is in fact the Complaints Officer there.

We would also suggest that parents of children with SEN who live in the areas of LAs who currently employ BS should urgently contact the Head of the Education Department, the Council Leader, their local councillors and their MP to express their views about the council's association with this firm.

Finally, if anyone is currently involved in an appeal involving BS, you may like to think about lodging a print-out of the tweets concerned with your evidence. They have been removed from BS's twitter feed, but have been reposted in a number of areas, for example at <http://chaosinkent.com/parenting/sen/dear-baker-small/> . You could also contact your LA direct to let them know that you object strongly to a firm which shows such a cavalier disregard of duties of confidentiality having access to sensitive information about your child. And you could also send a formal complaint to the tribunal expressing your feelings on having to deal with a firm that apparently considers your case something which they will ultimately have a public laugh about on a warm Saturday evening.