

Disabled girl wins £5,000 for Aids photo

By a Legal Affairs Correspondent 17 October 2001

A disabled child who mistakenly believed she was HIV-positive after a local authority illegally used her photograph to promote an Aids awareness campaign is to be paid £55,000 in damages and legal costs after a hearing in the High Court yesterday.

The girl, 10, who has spinal muscular atrophy and sickle cell anaemia, was shunned after friends saw her face on the front of a brochure setting out the London Borough of Newham's Aids strategy. Her parents said the most distressing part was "having to explain to the girl that she did not have Aids". They added: "It was heart-breaking. She was frightened that her friends had stopped playing with her because of these pictures, and even cancelled a birthday party because she was so worried."

Newham council agreed to pay damages and apologise, in what the judge described as a ground-breaking case.

The girl was photographed while attending Shrewsbury Day Nursery, run by Newham council, between 1993 and 1995. In July last year, her parents, who live in Beckton, east London, were horrified to see her picture "plastered" on brochures advertising strategies for children and young people affected by or infected with HIV/Aids and for preventing youth crime, said their counsel, John Critchley.

The Newham brochure, "Strategy for children and young people who are affected or infected by HIV/Aids", stated that the borough had "particularly high numbers of families affected by HIV" and estimated that 125 families had one member with HIV.

Mr Critchley said the pictures were taken without her parents' permission, stored without their knowledge and used throughout their community without consent. As soon as they were aware of the pictures, the parents wrote a "dignified" letter to Newham council.

The council said it would discontinue use of the brochures because they would be out of date at the end of last year. But in January this year the family discovered that the material was still available.

Mr Justice Garland said yesterday: "The local authority has failed properly to address this mistake which was incompetent rather than malicious ... but having been informed, it ought to have been addressed properly."

The action against Newham for breach of confidence, citing the Data Protection Act and the 1998 Human Rights Act, is the first such case to come to trial. The judge said the hearing was "ground-breaking litigation", with no guidelines for appropriate compensation. "Clearly, there was no commercial exploitation but there was an error aggravated by repetition," the judge added.

The girl's parents said later: "We sincerely hope Newham has not taken photos of other children living in the borough without their parents' consent and exposed them to a similarly traumatic experience."

Their solicitor, Louis Charalambous, said: "Newham's initial blunder in failing to get consent from the girl's parents when she was at nursery school was exacerbated by their abject failure to apologise as soon as the parents wrote them a polite letter of complaint."

Newham council agreed to pay £5,000 damages and an estimated £50,000 in court fees. But it made no formal admission of liability.