Housing Law Practitioners' Association

21 March 2012.

"TOO MANY M's AND NOT ENOUGH G's"

'HOMELESS CHILDREN: REFLECTIONS ON *G-v-SOUTHWARK*[1]'

Ian Wise QC.

> *" .. there is all the difference in the world between the services which an eligible, relevant or former relevant child can expect from her local children's services authority, to make up for the lack of proper parental support and guidance within the family, and sort of help which a young homeless person, even if in priority need, can expect from her local housing authority.*[2]*"*

Introduction

I do not intend this evening to go through the details of the various duties owed to 16 and 17 years old who find themselves homeless. That ground has been trodden on numerous occasions and are summarised in the two relatively short judgments given by Baroness Hale in the Hammersmith & Fulham and Southwark cases. For those of you who need chapter and verse I would recommend the recent LAG book, 'Children in Need, Local authority support for children and families' written by colleagues at Doughty Street Chambers.

I would like to spend the time available this evening to reflect on both the Southwark case and its predecessor, the Hammersmith & Fulham case. It is

[1] *R(G)-v-Southwark LBC* [2009] UKHL 26; [2009] 1 WLR 1299

[2] *R(M)-v-Hammersmith and Fulham LBC* [2008] UKHL 14; [2008] 1 WLR 535 at [24] per Baroness Hale.

astonishing to recall that in both of these cases permission to commence judicial review proceedings was refused. But perhaps more astonishing is that fairly straightforward duties owed to these vulnerable children were so poorly understood and more astonishing still that the outcome of the Southwark case was greeted so negatively by many, particularly in the housing advice sector. This is particularly so as the law post-Southwark was so clear and the benefit to 16 and 17 year olds being supported under the Children Act were so obviously superior to accommodation under the Housing Act. I recall with incredulity the refusal by prominent advocates for homeless young people to accept these advantages and to this day have no idea why they, and others in the housing advice sector, were so hostile to a framework that was so clearly in the best interests of the young people they purported to represent.

The Hammersmith & Fulham case

It was the Hammersmith & Fulham case that brought the dispute as to whether homeless 16 and 17 year olds should be supported through the Housing Act or the Children Act to the fore. Without this case there would have been no G-v-Southwark. In Hammersmith & Fulham the House of Lords said unequivocally that "*the Children Act duties supersede the Housing Act duties towards a 16 or 17 year old person*", per Baroness Hale at [15].

But where did it all start? When I first met M she was 18 years old with a baby, living with her mother in a 1-bed flat in West London. She had recently been released from prison where she had served a short sentence for breach of a community sentence. When she was in prison she had contacted the Howard League for Penal Reform through their advice line because she had nowhere to go when she was released. The local authority's position was that she should report to the homeless persons unit post-release.

The judgment of the House of Lords records that M had been excluded from school aged 14 and had never returned. She had a difficult relationship with her mother who had an inoperable malignant tumour. At one point she had presented to the local authority with her mother's Macmillan nurse with a letter from her mother saying that she was going into hospital the following day and was not going to let her daughter stay in her flat alone. At that time M was bailed to live at her mother's address. Eventually the local authority provided M with hostel accommodation but she was evicted because an ex-boyfriend came round and beat her up. The disturbance was a breach of her licence. If she had been provided with accommodation under s.20 she could not of course have been evicted. Having been evicted she went to live with her sister but she had a baby and things didn't work out. The court had asked the local authority to sort out accommodation so they could give her a community sentence but the authority failed to do so. Without a bail address M was sent to prison.

I have no doubt whatsoever that had Hammersmith & Fulham acted lawfully and referred M to its children's services department and provided support for her under section 20 of the Children Act M would not have been sent to prison. There was of course a perverse incentive for the local authority not to act lawfully; looking after vulnerable children would have left the local authority with ongoing duties towards M which would of course have to have been paid for by them.

If they had acted lawfully the local authority would also have been responsible for providing support and accommodation post-release.

Judicial review proceedings were issued. The first paragraph of the Claimant's Grounds stated:

> The Claimant is an 18 year old girl (date of birth 25.2.88) who is currently detained at HMYOI Cookham Wood where she is serving a 4 month Detention and Training Order for breach of a community sentence. Her sentence was imposed on 11th January 2006 and she will be released from custody on 10th March 2006. She comes from a chaotic background, her father having left the home when she was young and her mother being a drug dealer. Over the last year or so the situation has become worse as the Claimant's mother has a tumour and is dying. Whether due to that condition or not the relationship between mother and daughter became strained and in April 2005 the Claimant was asked to leave home. She was placed in a number of hostels and bed and breakfast establishments and at one point after being evicted from a hostel spent time with her sister. She spent a short time prior to her detention with her mother. In the meantime the Claimant has nowhere to live on her release and has no social worker. An added imperative for accommodation and support being provided for the Claimant when she is released from custody is due to the fact that she is pregnant.

She claimed:

(i) Due to the period that she spent placed by the Defendant in hotels, hostels and bed and breakfast accommodation she was 'looked after' by the Defendant and as such is now a 'former relevant child',

(ii) As a 'former relevant child' the Defendant is obliged to provide the Claimant with a Personal Advisor and to update her Pathway Plan,

(iii) Consistent with the duties towards the Claimant as a 'former relevant child' the Defendant is obliged to ensure that she has suitable accommodation and a contingency plan in case the identified suitable accommodation becomes unavailable for whatever reason,

(iv) the Defendant has failed to comply with the Youth Justice Board's National Standards and has failed to work with the Claimant during the course of her sentence and involve her in determining her needs and how they are to be met upon her release from custody, and

(v) the Defendant has failed to engage with the claimant and involve her in the decisions that affect her future

The House of Lords criticised the local authority for not referring M's case to its children's services; "*the housing department should have made a referral to the children's services department*", [29]. There should have been arrangements in place to ensure that when a child presents as homeless he or she is referred to children's services for them to assess for support under the Children Act. As Baroness Hale said at [33], "*I have no doubt that the housing services department should have referred the case to the children's services department and little doubt that, on the facts as we know them, the children's services department should have accepted responsibility for her*". If they had done so M would:

(a) probably not been sent to prison;
(b) would not have been placed in bed and breakfast and hostel accommodation from which she was liable to be evicted (as indeed she was);
(c) would have had the benefit of a personal advisor whilst in custody to make sure she had a pathway plan setting out how her future needs were to be met;
(d) would have had accommodation in place when she was released from custody.

The appeal however failed because it was said that accommodation provided under the Housing Act could not be construed as having been provided under the Children Act. The local authority got away with acting unlawfully.

The Southwark case

Whilst the outcome of the Hammersmith & Fulham case provided little comfort for M it did provide the prospect of real benefit for others in a similar position.

G, a 17 year old boy, had an irreconcilable breakdown in his relationship with his mother; he was kicked out of the family home. He left home and sofa-surfed at various friends' houses. On occasion he slept in cars. He had contacted the local housing department but as G was a homeless child he was advised, in light of the Hammersmith & Fulham case to present to the local children's services department. He was provided with a solicitors' letter requesting accommodation and support under s.20(1) of the Children Act. That early good advice was critical in this case.

Southwark refused to support G under the Children Act but reluctantly, after some hesitation, provided him with bed and breakfast accommodation in Gipsy Hill under the Housing Act pending an assessment of his needs as required by the Framework guidance. This assessment identified that G had a need for, among other things, accommodation and recommended a referral to the Homeless Persons Unit and various agencies. Southwark concluded that s.20 support was "not appropriate" as his needs can be met through the provision of housing and other support agencies. All he needed, according to Southwark, was "help with accommodation."

"Help with accommodation" was a ruse developed by local authorities to avoid their duties to homeless children under section 20. It is sad but predictable, that public bodies which exist to support vulnerable children should go to such lengths to avoid providing the support for homeless children required by law. Conversely it's good to know that this duplicity in seeking to avoid duties owed to vulnerable children (itself a form of neglect) has been consigned to the dustbin.

Mr Justice Simon thought it so obviously the case that G only needed "help with accommodation" that he found it unarguable that there was a duty on Southwark to provide support for G under s.20. He refused permission. Permission was however granted by the Court of Appeal but the majority

found that there was no duty on Southwark under s.20 as G's needs could be met by referring him to the housing department; they also thought he only needed "help with accommodation". Such a ruse was not going to get past Baroness Hale though!

Baroness Hale said towards the beginning of her speech that she was surprised that the case had reached the House of Lords given the guidance given in the Hammersmith & Fulham case, [5]. She found that the s.20(1) duty was owed to G and allowed the appeal. Importantly she concluded, at [34] by finding that the accommodation that Southwark had provided at Gipsy Hill purportedly under the Housing Act was in fact accommodation provided under s.20(1) of the Children Act. Accordingly G became an 'eligible' and subsequently a 'relevant' child for the purposes of the leaving care regime.

The decision of the House of Lords was unanimous, 5:0

This re-categorisation of accommodation provided under the Housing Act as section 20 accommodation appears to have been possible because of the involvement of the children's services department. The feature here that distinguishes it from the Hammersmith & Fulham case is that in that case there was no evidence that children's services knew about M. I find this distinction both troubling and unconvincing. It is troubling because, as I mention above, it allowed Hammersmith & Fulham to get away with both acting unlawfully and failing to protect a very vulnerable young woman. I find is unconvincing because the action was brought against the local authority as a corporate body not a particular department. It was the local authority that had the legal obligation towards M not the children's services department. In this regard see the language of section 20(1), "*every local authority* shall provide accommodation for any child in need .....".

Unsurprisingly local authorities seized on this chink of light to argue that although various agencies such as the Youth Offending Team knew of a homeless person's plight as the children's services weren't aware then no s.20 duty arose. This argument has now been closed down by the judgment of the Court of Appeal in *R(TG)-v-Lambeth LBC* [2011] 4 All ER 453.

Reflections

As a civilised society we attach great importance to the need to look after the vulnerable, including homeless children. We have carefully crafted laws to ensure that the state steps in where such a child does not have a family to look after him or her or the family cannot cope. Parliament was well-aware of the cost of implementing these laws when enacting the Children Act and amendments for ongoing support into early adulthood. And yet until the Southwark case, and with respect to the leaving care provision the Caerphilly case[3], these vital laws were routinely ignored and evaded. The numbers of vulnerable children who have not had the benefit of these legal entitlements must run into many thousands.

The law is relatively simple; the difficult task is its enforcement. I was dismayed to hear a government advisor at a recent Shelter conference say that there is no point in trying to make local authorities comply with the law as they don't have the money[4]. What we should do, she said, was not fight local authorities but work with them to secure better outcomes for young people. Tell that to M. In this saga we have learned of the cynical duplicity of local authorities who will do all they can to avoid looking after vulnerable children as they are required to do by law. I have seen little evidence of local authorities trying to work with children to secure better outcomes if to do so would cost them anything.

[3] *R(J)-v-Caerphilly CBC* [2005] 2 FLR 860

[4] Homeless young people – rights, wrongs and choices, 12 March 2012.

Returning to the government advisor's point about lack of money, it seems to me that we do have the money to look after vulnerable children in our society. If however as a society we decide that we don't have either the resources or the inclination to look after homeless children as the law currently requires then Parliament would have to change the law.

The prospect of any government removing the protections currently in place for homeless children is remote in the extreme. The obligation on us as lawyers representing vulnerable young people is to ensure that the law is complied with. One lesson we learn from the Southwark case is that with good advice and tenacity from the young person's representatives the rights of vulnerable young people can be enforced. Unfortunately too many young people do not have the benefit of such support and as a consequence there are too many M's and not enough G's.