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News release

Homeless teenagers: landmark judgment from the Law Lords

A local authority has today (Wednesday, 27 February) been criticised for not taking appropriate action to provide for a 16 year-old girl, M, whose mother could not look after her because she had cancer and other difficulties. Giving judgment in the case brought by the Howard League for Penal Reform, the Law Lords found that the London Borough of Hammersmith and Fulham should have referred M (who is now 20 years old) to its children's services department rather than access its housing department to put her up in a string of temporary hotels and hostels.

As Baroness Hale recognised "there is all the difference in the world between the services which a ..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 the sort of help which a homeless young person, even if in priority need, can expect from her local housing authority."

Although the House of Lords dismissed M's case on technical grounds, they found unanimously that London Borough of Hammersmith and Fulham did not do what they ought to have done for M, namely refer her for support from children's services. This judgment is very important in setting out how local authorities should deal with 16 and 17 years old who are unable to live with their families. It is no longer good enough for housing staff to provide temporary poor quality accommodation as has too often happened in the past. There must be an assessment of the needs of the young person and a decision made about the level of service to be provided.

M, the girl at the centre of the case and subject to an anonymity order, was such a child: the judgment describes how as the youngest of five, M and her family spent many years in unsettled accommodation until her mother was taken seriously ill and no longer able to cope with M. At the age of 17, M had been ejected, homeless and without support, from the family home by her terminally ill mother who was unable to cope with her.

M was placed in a string of unsuitable placements by the housing department of her local authority and the judgment comments that the "lack of suitable supported accommodation played an important part in M's encounters with the

criminal justice system". It was only when M became 18 in custody that she contacted the Howard League for help with resettlement on release from detention.

The Howard League for Penal Reform argued that M's local authority, the London Borough of Hammersmith and Fulham, failed to assess whether M was a child who required a home and support under the provisions of the Children Act 1989. The judgment considers in detail the inter-relationship between the provisions of the Children Act 1989 and the duty to provide emergency accommodation under the Housing Act 1996.

The judgment gives clear guidance on what ought to have happened when M approached the local authority and confirms that the housing department should have made a referral to children's services so that an assessment could be made of whether she was owed duties under section 20 of the Children Act 1989.

The Lords' judgment states that there is "no doubt that the housing department should have referred the case to the children's department and little doubt that, on the facts as we know them, the children's department should have accepted responsibility for her. M was not just a 'hale and hearty 17 year old' (as the local authority argued in the court below) but a deeply troubled young person with need for far more than a roof over her head."

The judgment acknowledges that 16 and 17 year olds present a challenge, as they struggle to discover their own identities and lead independent lives but reaffirms that local children's services "cannot avoid their responsibilities...by passing them over to the local housing authorities."

The judgment also confirms the distinct roles of social services departments and housing authorities and that where children are owed a duty under s20 of the Children Act 1989, that duty trumps or 'supersedes' Housing Act duties towards 16 and 17 year olds.

Although the appeal was dismissed on the technical legal point as to whether the court in this case could retrospectively designate M as being subject to the Children Act provisions, the Lords judgment gives clear guidance on what ought to have happened in M's case and other cases concerning 16 and 17 year olds who cannot live at home.

Responding to the judgment, director of the Howard League for Penal Reform, Frances Crook, said: "While we are disappointed that our appeal for M to receive retrospective support has not been allowed, we are pleased that the House of Lords has affirmed the vital importance of properly providing for our 16 and 17 year olds.'

“On the broader policy point, however, today’s judgment in the highest court in the land should ensure all local authorities heed the guidance and stop shirking their duties to these children in need.

“What can we expect of vulnerable children, if we do not ensure they receive the care they require? The vast majority of children in the criminal justice system come from difficult family backgrounds, with histories of abuse and neglect, while many also suffer mental health issues and addictions to drugs or alcohol.

“Considering that over three quarters of juveniles re-offend on leaving custody, this is not simply an issue of a child’s rights and our decency as a society but also an issue of public protection.”

Further information

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Hearings on R (on the application of M) (Appellant) v London Borough of Hammersmith and Fulham (Respondents) took place over Monday 14 and Tuesday 15 January in the House of Lords. The full judgment is available at <http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd080227a/hammer-1.htm>

This case was significantly different from other resettlement cases the Howard League for Penal Reform is involved with, as M became our client when she was 18 and not when she was a child. The Howard League’s legal team contended that M should have been eligible for provision under the Children Act 1989 *before* she entered custody, where she turned 18, rather than after leaving custody as is the situation with our other clients from resettlement cases.

The thrust of the Howard League’s case was that M should be entitled to on-going leaving care assistance under the Children Act 1989 (as amended) in light of the fact that she would have been entitled to this if she had been lawfully assessed as a child in need and accommodated under s20 before reaching the age of 18, as the judgment confirms ‘ought to have happened’ in this case. The Lords did not consider it appropriate to grant retrospective assistance in this case as M had never been dealt with by social services at all and all her requests for help had been dealt with through the Housing Department.

This judgment also demonstrates the vital importance of legal aid being available to challenge decisions that have an enormous impact on the lives and futures of young people. Not only would this case not have been possible without legal aid, but the availability of legal aid for other young people who experience similar problems will be essential if the guidance in this judgment is to be enforced.

The Howard League is the oldest penal reform charity in the world and set up a legal department to represent children and young adults in the penal system in 2002 following a successful judicial review against the Home Office that forced it to recognise that children in prison are protected by the Children Act 1989. The Howard League legal team has represented hundreds of children and has a track record of success in forcing improvement to prison conditions, parole procedures and support on release.