

Determining the duty to look after unaccompanied children under the Children Act 1989 (use of section 17 or section 20).

August 2007

H and others v London borough of Wandsworth and others 23rd April 2007¹.

Mr Justice Holman ruled that despite the local authorities arguments to the contrary, in two out of the three cases heard, the children were looked after under section 20 and therefore afforded all the accompanying rights, including access to leaving care services. In the third case the judgement agreed with the local authority that services had in this case been provided under section 17 of the Children Act and therefore the duty to the person concerned ended at age 18.

Background

Sections 17 and 20 of the Children Act 1989

The level and nature of support for children and young people seeking asylum has been an issue of great concern to many over recent years. Concern has focused mainly on the distinction between Sections 17 and 20 of the Children Act 1989, which define the duties of local authorities to provide support in accordance with a child's needs.

Section 17 provides a basic definition of a 'child in need' and places a duty on a local authority to provide a service appropriate to the child's needs. Local authorities are allowed to arrange for someone else to act on behalf of the local authority to provide these services. They are also allowed to give cash as well as other services.

Section 20 of the Act places a duty on a local authority to 'look after' a child in need, if they appear to need such a level of service. The duty involves consulting with a child about a placement, keeping siblings together, and a general duty to safeguard the welfare of the child. The Children Act regulations give clear instructions on the writing and reviewing of a care plan for a child 'looked after', as well as on the regularity of visits by a named social worker and on access to records. Section 20 also requires a local authority to provide a service to those leaving care.

¹ 2007 England and Wales High Court (Administrative Court) 1082
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The Hillingdon judgement and LAC (2003) 13

A landmark judgement was made in 2003 regarding the use of sections 17 and 20². Mr Justice Sullivan ruled that during the period of time relevant to that case (referred to as the Hillingdon judgement) the local authority did not have the power to provide accommodation for children in need under section 17 of the Children Act 1989. The act of providing accommodation made the children 'looked after' by the local authority under section 20.

By the time of the Hillingdon judgement, the Children Act 1989 had been amended to allow local authorities to provide accommodation under section 17 without the children becoming automatically 'looked after'. This amendment to the Children Act was implemented on 7th November 2002. This meant that children supported by local authorities after that date could not automatically rely on the Hillingdon judgement to secure their rights as 'looked after' children.

The result of this amendment was that once again, the local authorities had the power to provide accommodation as part of their Children Act support to unaccompanied children under section 17. Government guidance written in June 2003³ advised local authorities that the amendment 'did not affect the duties and powers of local authorities to provide accommodation for lone children under section 20 of the Children Act 1989'.

The circular gives clear guidance as to the process to be followed in order to make a decision on whether or not they have a duty to provide accommodation for the child under section 20 of the Children Act. 'The needs of the child should be assessed in accordance with the statutory guidance set out in the *Framework for the Assessment of Children in Need and their Families*'.

'The assessment should first determine whether or not the child meets the criteria set out in section 20 (1). Those criteria are:

- (a) there being no person who has parental responsibility for him;
- (b) his being lost or abandoned; or
- (c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.'

The circular recognises the need for the assessment to include taking account of the wishes and feelings of the child as required by section 20 (6) of the Children Act 1989 and advises that this consideration may result in a decision that the child is competent to look after him or herself, thereby making section 17 support more appropriate than making the child 'looked after' under section 20.

The guidance is very clear that the presumption should be that children with no parent or guardian to turn to in this country would need to be looked after under section 20 and that all of these children should be cared for under section 20 while the needs assessment is carried out.

Changes in practice

Research published in 2005⁴ reported that the impact of the Hillingdon judgement and government circular LAC (2003) 13 was varied. Some local authorities reported that their policy

² 2003 England and Wales High Court (Administrative Court) 2075.

³ Local Authority Circular (2003) 13 issued by the Department of Health on 2nd June 2003.

⁴ Ringing the Changes, Refugee Council, January 2005

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had changed to reflect the guidance and most reported some change in the way children and young people were supported.

More in depth research conducted over the following year⁵ reported a range of difficulties with fully implementing the policy change, many related to the resources needed to provide the appropriate level of service to the children and young people.

A research report published in 2006⁶ concluded that there is still much resistance to looking after children using section 20 of the Children Act 1989, in particular when those children are 16 or 17 years of age. The researchers came across vulnerable children placed in unsupervised accommodation, inadequately supported by the local authority. The report claims that the reluctance to use section 20 was partly due to the leaving care duty resulting from treating the child as 'looked after'.

The ruling itself

H & others v Wandsworth, Hackney and Islington

In the cases of Wandsworth's and Hackney's clients, the judge ruled that the duty laid out in section 20 (6) to ascertain and give due consideration to the child's wishes and feelings in an assessment of his needs does not override the duty in section 20 (1) to look after children who meet one other of the criteria.

He deemed the action by Wandsworth of presenting the child three options regarding the nature of support (two of them falling under section 17 and one under section 20) as unlawful. He rejected the claim by Hackney that their client was merely supported to find accommodation and not provided with it.

In the case of Islington's client, the judgement was that although Islington had provided her with accommodation for a few weeks, after that period their duties amounted to no more than signposting and helping her to privately rent accommodation. As she was looked after for fewer than 13 weeks she would not be entitled to any leaving care service from the local authority upon turning 18.

Conclusion

Local authorities must base their provision of services to unaccompanied children on an assessment of their needs, as stated in LAC (2003) 13. The duty to ascertain and take into consideration a child's wishes and feelings does not mean that local authorities may discharge their Children Act duties by asking children to choose between support under sections 17 or 20.

This important ruling supports the Hillingdon judgement in that if unaccompanied children require the provision of accommodation because they fulfil the criteria in section 20 (1) of the Children Act 1989, they are 'looked after' children and afforded all the protection and rights associated with that duty.

⁵ Local Authority Support to Unaccompanied Asylum-Seeking Children and Young People, Save the Children, 2005.

⁶ Seeking Asylum Alone, Bhabha and Finch 2006.