

**Note on the Court of Appeal Judgment, Hooper LJ, in
The Queen on the Application of S (referred to as J) and the LB of Sutton
(26.7.07)**

Facts:

1. J, born on 26.7.89, was on bail pending the outcome of 2 separate cases for most of the time between 8.05 and the end of 1.06. She was looked after by the London Borough of Sutton ('Sutton') for 42 days (6 weeks) up to 11.11.05 (remand to secure accommodation). Between 11.11.05 and 27.1.06, J was accommodated by 'W'. J was sentenced to a 24-month DTO on 27.1.06 in one case; and to a concurrent sentence on 31.1.06 in the other. J was released from Medway Secure Training Unit (MSTU) on 24.11.06. On her release, J lived at Wayside Hostel, run by a charity, until she was evicted on 11.12.06. She was then placed in B&B accommodation as a homeless person, until 13.12.06, when she was placed in another hostel, where she remains, waiting for permanent housing. (Full facts are set out in the judgment of Stanley Burnton J.)

Issues:

2. The appeal concerned the duties of a local authority under sections 20 and 23B of the Children Act 1989. J argued that the decision of Burnton J was wrong in finding that the local authority did not owe her duties under these sections. Ultimately, J sought a decision that she had been looked after for more than 13 weeks after the age of 13, including after she turned 16, and was therefore a relevant child.
3. There were 2 issues on appeal. First, during the period from 11.11.05-27.1.06, when J was accommodated by W, was she looked after by Sutton pursuant to section 20, and if so was she looked after for a period of 13 weeks or more? Second, when J was released from MSTU, did Sutton owe her a duty to accommodate her under section 20(1), and if so what were the consequences of that?

Held:

4. First, the accommodation of J by W from 11.11.05-27.1.06 was private fostering, and she was not looked after by Sutton under section 20.
5. Second, Sutton owed J a duty to accommodate her under section 20(1) when she was released from MSTU on 24.11.06, and owes her leaving-care duties as a relevant child.

Findings:

As to the first period (11.11.05-27.1.06):

6. Section 20(1): Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of—... (c) the person who has been caring for him being prevented...from providing him with suitable accommodation or care.

7. It was accepted by Sutton that J was a child in need in Sutton, and that subsection (c) applied. However, the court found that J was not a child appearing to Sutton to require accommodation because she was being accommodated by a family friend, W. The evidence before the court was poor, but what was there suggested that the accommodation by W was private fostering.
8. Further, the mere order of the Crown Court that J be released on bail "to live and sleep each night as directed by Social Services" could not of itself mean that the provisions of section 20(1) were satisfied. A local authority has to take a "central role" in making the arrangements for a child to live with a person for the child to be considered accommodated under section 20(1) rather than privately fostered (per *LB Southwark v. D* [2007]). The YOT had a role in arranging J's accommodation with W, but it was not acting on behalf of Sutton nor using its money.

As to the second period, post-release from MSTU on 24.11.06:

9. There was no dispute that immediately before J's release from MSTU, Sutton had a section 20(1) duty to provide her accommodation. However, Sutton maintains that by the time J was released from MSTU, they no longer had such a duty because she no longer required accommodation.
10. Burnton J. made a declaration that Sutton had failed to carry out a lawful assessment of J's needs. While J was still in detention, Sutton told her solicitors that on her release, she should go to the Homeless Persons Unit. Sutton now accepts that was wrong. A person to whom a duty under section 20 is owed does not have a priority need under the Homelessness (Priority Need for Accommodation) (England) Order 2002.
11. Sutton was seeking to side step its duties under section 20(1) by having J declare herself homeless and thus get state benefits with which she could buy accommodation.
12. J had said she didn't want to be in a children's home or foster care or 'looked after', but Sutton failed to offer her the choice of being accommodated at Wayside under section 23(2) [section 23 sets out where a local authority can place a looked-after child]. The "whole process was undermined by the assumption that J could and should be suitably accommodated by the Homeless Persons Team."
13. Although Burnton J. held that by the time J was released from MSTU, she did not require accommodation under section 20 because she had agreed to accept accommodation in Wayside, that offer of accommodation to be paid for by state benefits was not 'on the facts of this case' an offer which even if accepted, could result in Sutton evading its section 20(1) and related obligations.

Declaration:

14. J was placed at Wayside in fulfilment of Sutton's obligations under section 20(1), which obligations continued at the time of her release from MSTU. The judgment of Homan J in *H and others v. London Borough of Wandsworth and others* [2007] was helpful in reaching these conclusions.

Argument re Children's views not needed to be resolved in this case

15. Hooper LJ: Section 20(6) provides that 'before providing accommodation' under section 20, the local authority shall '(a) ascertain the child's wishes and feelings regarding the provision of accommodation; and (b) give due consideration...to such wishes and feelings of the child...'
16. Burnton J. concluded that 20(6) was relevant when deciding whether there is a duty to provide accommodation under section 20(1).

17. It's not necessary to resolve this, except that in deciding whether a child appears to require accommodation, "the local authority will have to inform itself about the child and...that might well include talking to the child."
18. Lady Justice Arden agreed with Hooper LJ that the court did not need to resolve this issue, but added her observations. Section 20(6) imposes a duty on the local authority before it discharges its duty to provide accommodation to take account of the wishes and feelings of the child. She made her observations because she believed that Burnton J, based on his incorrect interpretation that section 20(6) could be used to decide whether accommodation should be provided, held that J did not 'require' accommodation because she had agreed to accept accommodation at Wayside as a homeless person.
19. The Master of the Rolls observed that "whatever the true construction of that sub-section, it may well be appropriate for the authority to discuss the position with the child before reaching a conclusion as to whether he or she 'requires accommodation' within the meaning of section 20(1). All will depend upon the circumstances of the case, including of course the age and maturity of the child."

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