

SOCIAL SERVICES JURISDICTIONAL AND ELIGIBILITY DISPUTES IN 2008

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- As between local authorities
- As between central and local government
- As between health services and social services

- Cost
- Trust
- A la carte provision

Children Act 1989

- Liverpool CC v Hillingdon LBC

Liverpool CC v Hillingdon LBC

- Had Hillingdon lawfully discharged its duty to AK by taking him to and leaving him in Liverpool? Did it thereafter owe him no further or continuing duties?
- If not, does the clock stop? Are Hillingdon fixed with sole responsibility under section 20? Or does Liverpool come under a duty under section 17 and or 20 of the Children Act 1989 to assess him?

In finding that if both authorities were liable, should conduct the assessment?

HOUSING OR SOCIAL SERVICES? SECTION 17 OR SECTION 20?

M v Hammersmith & Fulham [2008] 1 WLR 535

15. Thus, in the longer term, the Children Act duties supersede the Housing Act duties towards a 16 or 17 year old young person. A local housing authority could not be satisfied that a 16 or 17 year old was in priority need for the purposes of section 193(1) of the 1996 Act if they were satisfied that the local children's authority owed a duty to accommodate that young person under the 1989 Act. But the interim duty in section 188 might arise where the housing authority had 'reason to believe' that a 16 or 17 year old was in priority need and did not yet know whether or not the Children Act duties were owed.

Which service? Section 17 or section 20?

H v Wandsworth

“103 There is clearly a factual spectrum between undoubted provision of accommodation at one end, to mere or incidental help with accommodation at the other. At the first end of the spectrum, a social services department may actually house a person rent-free in accommodation which they actually own. At the other end of the spectrum, they may merely provide practical assistance by introducing a person to a private landlord and perhaps help with completing the necessary documents”.

Section 17 and homelessness provisions?

G v Southwark

28th/29th January 2009

**Precedent fact and Article 6 contentions.
Can local authorities conduct their own age
assessments?**

M v Lambeth and A v Croydon

- Were the Defendants' age determinations contrary to section 6 of the *Human Rights Act 1998* in that they were contrary to the procedural protections of Article 6 and/or Article 8 of the *European Convention on Human Rights*? (and/or Article 22(1) of the UNCRC)
- Is the question of whether an individual is a child for the purposes of sections 17 and 20 of the *Children Act 1989* one of precedent fact, which the court may review on the balance of probabilities?
- Was Lambeth's departure from the decisions of the AIT and the Secretary of State on M's age lawful?
- For the purposes of assessing whether a person is a child, is paediatric evidence of the sort produced by Dr Michie and/or Dr Birch in these cases scientifically ill-founded and of no evidential value? What role if any should paediatric evidence of the sort produced by Dr Michie and/or Dr Birch have in the assessment process of assessing whether a person is a child?

“ the determination of the age of the applicant will depend on the history he gives, on his physical appearance and on his behaviour” (B paragraph 20)

- *“the determination of the applicant’s age is rendered difficult by the absence of any reliable anthropometric test: for someone who is close to the age of 18, there is no reliable medical or other scientific test to determine whether he is or was over the age of 18”.*
- *“To obtain any reliable medical option, one has to go to one of the few paediatricians who have experience in this area. Even they can be of limited help...”*

- *C v Merton:*
- *“One can infer that the local authority might wish to say, “we disagree with it because Dr Michie has accepted her as credible but we have good reason to think she is not credible.” That, as so formulated, seems to me probably in itself a valid justification for departing from Dr Michie's report. But that is not said”*

- page 34 of the ILPA report “When is a Child not a Child?”
- *"According to the RCPCH guidelines, the determination of age is a complex and often inexact set of skills where various types of physical, social and cultural factors all play their part, although none provide a wholly exact or reliable indication of age, especially for older children. **For this reason assessments of age should only be made in the context of a holistic examination of the child and no single measurement or type of assessment should be relied upon**".*