



26 November 2009

## PRESS SUMMARY

### **R (on the application of A) v London Borough of Croydon and one other; R (on the application of M) v London Borough of Lambeth and one other [2009] UKSC 8**

*On appeal from the Court of Appeal Civil Division [2008] EWCA Civ 1445*

**JUSTICES:** Lord Hope (Deputy President), Lord Scott, Lord Walker, Lady Hale, Lord Neuberger

### **BACKGROUND**

Local authorities owe a variety of duties towards children in need, who may include unaccompanied minors coming here to seek asylum. Such children may be entitled to accommodation and other help which is different from, and rather better than, the services available to adults. So disputes may arise about whether a young person is or is not a child. Today, the Supreme Court unanimously decided that it is ultimately for the courts, and not the local authority, to resolve this question.

The Court considered two individual cases, but there are many others raising the same issue. “A” and “M” both arrived alone in England and claimed asylum, stating that they were under eighteen. Each was referred to local authority social workers who assessed him as an adult. Each challenged the resulting decision of the local authority that he was not entitled to accommodation.

Two main issues were before the Supreme Court:

- (1) Whether the duty on local authorities to provide accommodation and related services under the Children Act 1989 is owed only to a person who appears *to the local authority* to be a child (so that the decision is ultimately for the authority to make), or whether it is owed to a person who is *in fact* a child (so that the decision is ultimately for a court to make);
- (2) Whether the decision to provide accommodation is the determination of their “civil rights”, so that the decision-making process has to comply with the requirements for a fair trial before an independent and impartial tribunal under Article 6 of the European Convention on Human Rights.

### **JUDGMENT**

*The Court unanimously allowed these appeals. The lead judgment of the Supreme Court was given by Lady Hale. The other members of the Court (Lord Hope, Lord Scott, Lord Walker, and Lord Neuberger) agreed with her.*

### **REASONS FOR THE JUDGMENT**

- On the first main issue, Lady Hale explained that the many references to “a child” throughout the 1989 Act must mean the same thing, that is, a person who is in fact a child. There was a

right or a wrong answer to this question, difficult though it might be to decide it in some cases. It was a different type of question from whether the child was “in need” within the meaning of the Act, which involved a number of different value judgements suitable for expert assessment by social workers (paragraphs [26]-[27]). She pointed out, however, that local authorities (or the UK borders agency in asylum cases) will still have to decide whether or not a person is a child in the first instance; it will only be if this remains disputed that the court may have to take the decision itself (paragraph [33]).

- On the second main issue, Lady Hale said that it was unnecessary, in light of her conclusion on the first issue, to reach any firm conclusions on the application of Article 6 of the Convention (paragraph [34]). She declined to decide whether a child’s entitlement to accommodation under the 1989 Act was a “civil right”, but commented that she would be most reluctant to hold that Article 6 required the judicialisation of claims to welfare services of this kind (paragraphs [44]-[45]). Lords Scott, Walker and Neuberger agreed with her approach (paragraphs [66]-[68]). While agreeing that it was unnecessary to reach any firm conclusions on the point (paragraph [50]), Lord Hope doubted whether the duty of local authorities to provide accommodation under the 1989 Act gave rise to a “civil right” within the meaning of Article 6 of the Convention (paragraphs [55]-[65]).

#### **NOTE**

**This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for that decision. The full opinion of the Court is the only authoritative document.**

The full judgment is available on the Supreme Court website from 10:00 am today at: - <http://www.supremecourt.gov.uk/news/judgments.html>