



London Universities Mooting Shield
First Round Problem

Case Reference 2008/LUMS1

IN THE HOUSE OF LORDS

ON APPEAL FROM THE COURT OF APPEAL (Civil Division)

B E T W E E N :

ANDREW BROWNE

Appellant

– and –

DR BARNEYS

Respondent

BRIEF TO COUNSEL

Andrew, an 18 year old youth, whose mother is a drug addict and whose father is in prison, was taken into care at the age of 12 by the London Borough Council of Camlington in pursuance of its statutory powers to take children into care for the safety and welfare of the child, under the Children Act 2000 (a fictitious measure).

Camlington Council previously owned and ran residential homes for orphans and children, but under the central government policy of privatisation and contracting out the delivery of public services, Camlington has leased its residential care homes to Dr Barneys, a charity which was established to run orphanages, and entered into a contract with Dr Barneys under which children in care under the Council's statutory powers will be housed and cared for by Dr Barneys, in return for a payment of a contract fee for each child. The contract confers powers on Dr Barneys to control the children in care, including the power to restrict their family access. The Council has these powers under the Children Act 2000, and is empowered to delegate such powers to employees and agents.

Camlington Council transferred Andrew into the care of Dr Barneys when he was aged 14. For the next four years he was denied access to his parents, as he was deemed to be a very disturbed and angry youth, he was frequently punished by being locked in his room for long periods, and was denied meals. He was also subjected on occasion to forcible physical restraint and slapping by members of the staff at Dr Barneys.

Upon his release from care at the age of 18, Andrew brought proceedings for compensation against Dr Barneys under the Human Rights Act 1998 for violation of his Convention rights to private and family life, and freedom from inhuman and degrading treatment.

At first instance, Brightview J held:

- 1 Dr Barneys was a public authority under Section 6 of the Human Rights Act 1998: and therefore, as a public body, has obligations under the act.
- 2 The denial of access to Andrew's parents by Dr Barneys was neither a permissible nor proportionate restriction upon Andrew's right under Article 8 of the European Convention of Human Right (ECHR): and that the treatment by the staff at Dr Barneys breached Andrew's Article 3 rights under the ECHR.

On appeal, Dimsdale LJ, delivering the judgment of the court, held:

- 1 Brightview J had erred in finding that Dr Barneys was a public authority under Section 6 of the Human Rights Act 1998. Therefore Dr Barneys, as a private body, had no obligations under the Act.

(to be addressed by the senior member of counsel)

- 2 If the Human Rights Act 1998 did apply to Dr Barneys, the denial of access to Andrew's parents was a justified restriction upon Andrew's Convention right to private and family life: and that the treatment by the staff at Dr Barneys did not constitute inhuman and degrading treatment.

(to be addressed by the junior member of counsel)

Fixture Information

This round will take place on **Wednesday, 29 October at 6pm**

Hosted by **London School of Economics**

Skeleton arguments and e-bundles must have been exchanged by **Monday, 27 October at 2pm**

Appellants

Respondents

London School of Economics

v

University College London

King's College London

v

School of Oriental and African Studies

London South Bank

v

Greenwich

Queen Mary

v

Westminster