M v LAMBETH BOROUGH COUNCIL (NO. 3)

Court of Appeal

Fox LJ and Sir Roualeyn Cumming-Bruce

26, 27 November 1985; 22 January 1986

Child – Ward of court – Committed to care of local authority – Direction that child be placed in secure accommodation – Function of review panel – Whether local authority bound by advice of panel

Procedure – Juvenile court – Application for authority to place child in secure accommodation – Whether court could receive hearsay evidence

Procedure – Ward of Court – High Court committing ward to care of local authority and directing that he be placed in secure accommodation – Requirement that such placement be reviewed by review panel – Review panel merely an agent of local authority – Whether local authority bound by advice of review panel

Procedure – Ward of court – Ward committed to care of local authority – Local authority obtaining leave of High Court to apply to juvenile court for authority to place ward in secure accommodation – Whether High Court should direct that its findings be made known to juvenile court

Wardship – Ward committed to care of local authority – Proposal to place ward in secure accommodation – Whether local authority should obtain leave of High Court before applying to juvenile court.

Section 21A of the Child Care Act 1980 and the Secure Accommodation (No. 2) Regulations 1983 provide that a child in the care of a local authority shall not be placed in accommodation provided for the purpose of restricting liberty ('secure accommodation') unless, on application to a juvenile court, the court is satisfied that specified criteria are satisfied. If so satisfied, the juvenile court shall make an order authorizing the child to be kept in such accommodation, and the authority may be for an initial period not exceeding 3 months and thereafter for periods not exceeding 6 months. These statutory provisions (as amended with effect from 1 January 1984) apply, *inter alia*, to wards of court committed to the care of a local authority under s. 7(2) of the Family Law Reform Act 1969. Under the Regulations, each local authority is required to appoint persons (the 'review panel') to satisfy themselves that the criteria for keeping a child in secure accommodation continue to apply and that the placement of the child in such accommodation continues to be appropriate.

The child, a boy, was committed to the care of the local authority in December 1983 in wardship proceedings. The judge directed that he be kept in secure accommodation. Following the implementation of the amended s. 21A of the 1980 Act and the No. 2 Regulations, the High Court directed that applications be made to a juvenile court: see *M v Lambeth Borough Council* [1985] FLR 187. The juvenile court authorized that the child be kept in secure accommodation until 18 December 1984. It was proposed to apply for a further authorization from the juvenile court but the review panel were of opinion that the child should no longer remain in secure accommodation. A second application was made to the High Court: see *M v Lambeth Borough Council (No. 2)* [1985] FLR 371. As a result of the findings and directions of Sheldon J the juvenile court authorized that the child be kept in secure accommodation until 17 June 1985. Although all those directly concerned with the care of the child were of opinion that he should remain in secure accommodation, the review panel were of opinion that he should be released immediately. Consequently, a third application was made to the High Court. Sheldon J held that the statutory powers of a local authority over a ward of court committed to their care, including the power of placing the child in secure accommodation, were to be

exercised subject to any directions given by the court. The judge rejected a submission that the review panel was the only body (apart from the juvenile court) entitled to decide whether the necessary criteria existed to justify the retention of a ward in secure accommodation and held that the panel was merely an agency of the local authority and the local authority was not obliged to follow the panel's advice. The judge further held that the High Court could give directions that its conclusions as to the existence of the criteria justifying a ward's retention in secure accommodation be made available to the juvenile court.

The local authority appealed.

Held –

(1) Where a local authority was satisfied that a prima facie case existed for the placement of a ward in secure accommodation, they could and should apply first to the juvenile court. If the juvenile court held that such a placement should not be authorized then, subject to the right of appeal to the Crown Court, that was the end of the matter. If the juvenile court authorized placement in secure accommodation, the local authority should then apply to the High Court for directions whether or not so to place the ward. It was not necessary for the local authority to obtain directions from the High Court before applying to the juvenile court unless they were uncertain whether to make the initial application to the juvenile court.

(2) Where a ward was in the care of a local authority, the local authority should not take any step inconsistent with the court's current directions without applying to the court for further directions. The local authority was not bound to accept the advice of the review panel as to the cessation of the placement in secure accommodation. However, if the local authority agreed with the panel that the criteria no longer applied or that continued placement was no longer appropriate, they should forthwith apply to the High Court for further directions.

(3) The effect of the current statutory provisions was that the juvenile court (and the Crown Court on appeal) alone had jurisdiction to decide whether the criteria existed for placing ward in secure accommodation. Where leave had been sought from the High Court by a local authority to apply to the juvenile court, the juvenile court had the right and duty to satisfy itself that the leave of the High Court had been sought and granted. In such a case, the High Court was entitled to include in its directions guidance to the local authority as to the material to be submitted to the juvenile court. But, as the juvenile court alone had jurisdiction to decide whether the criteria existed, it would be better if the High Court excluded from its order giving leave to apply any findings on the matters within the exclusive jurisdiction of the juvenile court under s. 21A of the Child Care Act 1980.

Per curiam: (1) The court agreed with the judges who had expressed dismay that the legislature, probably by inadvertance, had exposed the children concerned to such multiplicity of proceedings. The sooner it was corrected the better. The remedy was to give the High Court the jurisdiction in a wardship case to exercise the functions presently committed solely to the juvenile court.

(2) The proceedings before the juvenile court were not party proceedings in the ordinary sense and the strict application of the hearsay rule might be inconsistent with the jurisdiction which s. 21A of the 1980 Act had introduced into the juvenile court. There was room for the relaxation of the hearsay rule where the nature of the inquiry showed that its strict enforcement would, or might, frustrate the efficacy of the statutory procedure: see *Humberside County Council v R* [1977] 1 WLR 1251.

Statutory provisions considered

Child Care Act 1980, s. 21A

Secure Accommodation (No. 2) Regulations 1983, regs. 16, 17 and 18.

Cases referred to in judgment

A v Liverpool City Council (1981) 2 FLR 222; [1982] AC 363; [1981] 2 WLR 948; [1981] 2 All ER 385

Humberside County Council v R [1977] 1 WLR 1251
M v Lambeth Borough Council [1985] FLR 187
M v Lambeth Borough Council (No. 2) [1985] FLR 371
K (Ward: Secure Accommodation), Re [1985] FLR 357
W (A Minor) (Care Proceedings: Wardship), Re [1985] FLR 879; *sub nom. Re W (A Minor) (Wardship: Jurisdiction)* [1985] AC 791; [1985] 2 WLR 892
APPEAL from decision of Sheldon J in *M v Lambeth Borough Council (No. 3)* [1985] FLR 1167.

Barbara Calvert QC and *Barbara Slomnicka* for the local authority, Lambeth Borough Council
Gail Carrodus for the mother;
Nicholas Medawar QC and *H.W. Turcan* for the guardian ad litem;
Caroline Rodger for the Liverpool City Council.

Cur. adv. vult.

SIR ROUALEYN CUMMING-BRUCE:
This appeal raises certain questions of procedure when a ward of court is the subject of an order made under s. 21A of the Child Care Act 1980, as amended, and pursuant to the Secure Accommodation (No. 2) Regulations 1983 (SI 1983 No. 1808).

There are three issues raised in the appeal:

(1) Where a child has been placed in the care of a local authority by an order of the High Court under s. 7(2) of the Family Law Reform Act 1969, is it the duty of the local authority to seek directions from the High Court before applying to the juvenile court for an order authorizing the local authority to place or keep the child in secure accommodation?

(2) Where a child has been placed in secure accommodation for a specific period, and the persons appointed by the local authority to review the continued appropriateness of the placement have advised that the child should no longer be so restricted, what action if any should the local authority then take?

(3) Where an application is made to the High Court for directions whether the local authority should apply to the juvenile court for an order placing the ward in secure accommodation, keeping him there, or terminating his continuing eligibility for such placement, what directions should the High Court give as to the material to be placed before the juvenile court, and how far, if at all, should the order of the High Court recite the findings of fact made by the High Court?

The background of the minor's history has already been related in judgments of Balcombe J (as he then was) in *M v Lambeth Borough Council* [1985] FLR 187, and of Sheldon J in *M v Lambeth Borough Council (No. 2)* [1985] FLR 371. Both judges then adverted to the unsatisfactory state of affairs in which, under the existing statutory scheme, there is an overlap between the jurisdiction of the High Court and the juvenile court which alone can authorize that a child is eligible for placement in secure accommodation.

The proceedings *M v Lambeth Borough Council (No. 3)* [1985] FLR 1167, also before Sheldon J, arose upon an application by the Official Solicitor in the circumstances described by the judge at pp. 1173C to

1175B in the judgment now under appeal. The statutory scheme was concisely set out by Sheldon J in his judgment at pp. 1169G to 1170E:

> 'Section 21A' [of the Child Care Act 1980] 'provides by subs. (1) that:
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> ". . . a child in the care of a local authority may not be placed and, if placed, may not be kept, in accommodation provided for the purpose of restraining liberty unless it appears –
>
> (*a*) that –
>
> (i) he has a history of absconding and is likely to abscond from any other description of accommodation; and
>
> (ii) if he absconds, it is likely that his physical, mental or moral welfare will be at risk; or
>
> (*b*) that if he is kept in any other description of accommodation he is likely to injure himself or other persons."
>
> By subs. (2), read in conjunction with the Regulations (particularly regs. 8, 10, 12 and 13) made thereunder, no such child may be kept in such (secure) accommodation for more than 72 hours without the authority of a juvenile court, to which application for such authorisation is to be made as necessary by a local authority. By subs. (3), however, in such an event the duty of the juvenile court is limited to satisfying itself that the relevant criteria for keeping a child in secure accommodation have been established; and if such court:
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> ". . . determines that any such criteria are established it *shall* make an order authorising the child to be kept in such accommodation and specifying the maximum period for which he may be so kept." (Emphasis added.)
>
> In addition, by subs. (7):
>
> "The Secretary of State may by regulations provide . . . (*c*) that such other provisions as may be so specified shall have effect for the purpose of determining whether a child of a description specified in the regulations may be placed or kept in [secure accommodation]."
>
> Finally subs. (8) provides:
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> "The giving [by the juvenile court] of an authorisation under this section shall not prejudice any power of any court in England or Wales or Scotland to give directions relating to the child to whom the authorisation relates."'

As this case raises an issue as to the functions and effect of persons appointed to review placement in a community home, it is appropriate to quote regs. 16 and 17:

> '16. Each local authority shall appoint at least two persons who shall review at intervals not exceeding three months the case of each child to whom these regulations apply where the child continues to be kept in secure accommodation in a community home and either –
>
> (*a*) is in the care of that authority, or
>
> (*b*) falls to be accommodated by that authority, being the responsible authority.
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> 17. – (1) The persons appointed under regulation 16 in addition to satisfying themselves in relation to each case that the criteria for keeping the child in secure accommodation continue to apply, shall

satisfy themselves that the placement in such accommodation in a community home continues to be appropriate and in doing so shall have regard to the welfare of the child whose case is being reviewed.
(2) In undertaking the review referred to in regulation 16 the persons appointed shall ascertain and take into account the views of –

(*a*) the child, and
(*b*) the parent or guardian of the child, if practicable, and
(*c*) any other person who has had the care of the child, whose views the persons appointed consider should be taken into account, if practicable, and
(*d*) the child's independent visitor, if one has been appointed, and
(*e*) the local authority managing the secure accommodation in which the child is placed if that authority is a different authority from that specified in regulation 16(*a*) or (*b*).

(3) The local authority shall, if practicable, inform all those whose views are required to be taken into account under paragraph (2) of the outcome of the review.'

Regulation 18 provides that records of specified particulars in respect of a child in secure accommodation in a community home are to be kept, and those records must include:

'(*d*) all those informed by virtue of regulations 9, 15 and 17, court orders made by virtue of section 21A of the 1980 Act and reviews undertaken in respect of the child by virtue of regulation 17, and
(*e*) the date and time of his discharge and his residence following discharge from secure accommodation.'

The earlier history of the ward and of the successive legal proceedings concerning him were set out in the two cases, *M v Lambeth Borough Council* [1985] FLR 187 and *M v Lambeth Borough Council (No. 2)* [1985] FLR 371, to which we have referred. The particular problem that Sheldon J had to consider in *M v Lambeth Borough Council (No. 2)* on 17 December 1984 arose from the fact that the persons appointed under reg. 16 to review the continued appropriateness of the placement had, by a majority, rejected the advice of everyone personally concerned with the case, as well as the Official Solicitor and the psychiatrist whose advice had been sought. Upon an application for directions on what to do next, Sheldon J directed the local authority to apply to the juvenile court for a further authority that the statutory criteria continued to apply to the child.

Authority was obtained for his continued placement for a further 6 months, ending on 17 June 1985. Once again, upon review of his case by the persons appointed by the local authority under reg. 16, there was unanimity among everyone concerned with the boy, personally or professionally, and once more the persons appointed to review rejected that unanimous advice and proposed his immediate release from secure accommodation.

In that situation it was the Official Solicitor who applied to Sheldon J for further directions on 8 May 1985 in *M v Lambeth Borough Council (No. 3)*. The evidence before the judge was overwhelming, and left him in no doubt whatever, not only that it was in the boy's interest that his place-

ment at the Kingswood Unit should be continued for a further 2 months until he reached the age of 16, but also that the necessary criteria existed to authorize such a course. However, the legislation to which we have referred constitutes the juvenile court as the only forum with jurisdiction to decide that the criteria apply. The judge expressed in his judgment his views that, in the statutory context, the local authority to whom care of a ward has been entrusted by the court have to exercise their powers 'subject to any directions given by the court', so that all major decisions relating to the child remain the responsibility of the High Court.

Sheldon J held that the High Court, having the right and duty to consider whether the criteria exist to justify the ward's retention in secure accommodation, could disclose its conclusions and direct that they be made available to the juvenile court. He accepted that the weight that the juvenile court attached to the High Court's views, and how they conducted their proceedings, were largely matters for them, but they might well regard the conclusions of the High Court as helpful in deciding whether criteria existed to justify the further retention of the child in secure accommodation.

The order of the judge was accordingly expressed in the following form:

> 'Upon hearing counsel respectively for the plaintiff, for the first defendant, for the second defendant and for the Official Solicitor as guardian ad litem for the minor and upon hearing and reading as the case may be the oral and affidavit evidence and reports from time to time of Dr Michael Heller, Mr J.R. Hart, Mr C.V. Butcher and Miss V.M. Rogers and upon reading the report of 3 May 1985 of the Official Solicitor and such other contemporary reports as were produced in the course of the proceedings, and upon being satisfied that:
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> (i) the minor . . . has a history of absconding and that he is likely to abscond from any accommodation provided for the purpose of restricting liberty;
> (ii) if he absconds his physical and moral welfare will be at risk; and
> (iii) the continued placement of the minor in the Kingswood Special Unit, Bristol, for a further 2 months from 18 June 1985 continues to be appropriate and in the best interests of the minor, his welfare being regarded as the first and paramount consideration
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> It is ordered and directed that:
> (1) the said minor do remain a ward of this Honourable Court during his minority or until further order;
> (2) during the continuance of such wardship the minor
>
> (*a*) until his 16th birthday on 15 August 1985 do remain in the care of the first defendant pursuant to s. 7(2) of the Family Law Reform Act 1969, but
> (*b*) thereafter and until further order be committed to the care of the second defendant likewise pursuant to s. 7(2) of the Family Law Reform Act 1969, such care to be administered on their behalf by the Liverpool and Knowsley Family Service Unit;
>
> (3) the first defendant do take all steps necessary and within their powers to provide and to obtain the authority of the juvenile court for the continued placement of the minor for a further 2 months from 18

June 1985 at the said Kingswood Special Unit;
(4) unless otherwise ordered by this Honourable Court, the minor with effect from 15 August 1985 aforesaid be permitted to live with the plaintiff at her home, but that until such date the rate of progress of the minor towards such rehabilitation and the means by which it is to be achieved, including therein any question as to how long he is to remain in the secure or open wings of the said Special Unit and as to the extent, nature and periods of any visits to his mother's home, be determined from time to time in the light of all relevant circumstances by the social workers employed by the first defendant having knowledge of his case and by the staff of the said special unit as provided by paras. 4 and 5 of the order herein dated 17 December 1984 as amended by para. 1 of the order herein dated 3 April 1985; provided that in the event of any disagreement between them the said social workers and the said staff, the opinions of the said social workers are to prevail;
(5) upon the plaintiff undertaking in writing to return the minor to the jurisdiction of this court at the conclusion of the period hereafter mentioned, the plaintiff do have leave to take, and the first defendant do have leave to permit him to be taken by her out of the jurisdiction to Northern Ireland for the purpose of a holiday there from 8 to 15 July 1985;
while the minor is or remains in their care and until further order the first and second defendants as the case may be do supply the Official Solicitor monthly for the next 6 months and thereafter at such intervals as he may request reports as to the minor's progress. . . .'

With that explanation of the background, we come to the three issues which we described at the beginning of this judgment. They are raised before us in order to resolve uncertainty as to how to devise the procedure which will reconcile the overlapping responsibilities of the High Court, the juvenile court and the local authority, to whom the High Court has entrusted the care of a disturbed or obstreperous child, although the appeal cannot affect the actual life of this child, as the directions of the judge have been put into effect and concluded before the appeal could be heard. We agreed that there was sufficient practical uncertainty about the law to make it right, though exceptional, to allow the appeal to proceed to a conclusion.

The first question

There has been a difference of judicial opinion on the question whether an application for leave to apply to the juvenile court is necessary whenever the child in question is a ward of court who has been entrusted to the care of a local authority pursuant to s. 7(2) of the Family Law Reform Act 1969. In his judgment of 17 December 1984, *M v Lambeth Borough Council (No. 2)* [1985] FLR 371, affirmed in his judgment 6 months later, *M v Lambeth Borough Council (No. 3)* [1985] FLR 1167, now under appeal, Sheldon J held that the High Court should not give leave to apply to the juvenile court unless it is satisfied that the criteria have been established, and gave it as his opinion that those facts and findings should be recited in the order of the court, which can then be placed before the juvenile court. On 14 December 1984 Heilbron J expressed a different

view: see *Re K (Ward: Secured Accommodation)* [1985] FLR 357 at p. 367F to end.

In what we would call the 'usual' case in which the facts and opinions of relevant adults constitute a clear prima facie case for application with a reasonable prospect of success, we are clear that the reasoning and the procedure proposed by Heilbron J is correct. The important step in the child's life arises when he is to be placed in secure accommodation. The application to the juvenile court is a necessary preliminary to a decision so to place the child. Where the local authority is satisfied that a prima facie case exists for such a placement, they can and should apply to the juvenile court for authorization on the ground that the statutory criteria exist in the case of the child. If the juvenile court, or the Crown Court on appeal, hold that transfer to secure accommodation is not authorized, *cadit quaestio*. If the juvenile court or Crown Court authorize transfer, the local authority should then apply to the High Court for directions whether to transfer the child or not. It is not necessary, in such a case, for directions to be obtained from the wardship judge before the local authority apply to the juvenile court. Only if the facts are such that the local authority is uncertain whether to make an initial application to the juvenile court should the local authority apply to the High Court for directions whether to apply to the juvenile court.

In the instant case, however, the initial application to the juvenile court had been made, authority for placing the child in secure accommodation for a second period had been given by the juvenile court, and there was only a problem for the local authority because the persons appointed to review the continued appropriateness of the placement had advised that it was not appropriate.

For the reasons we give in our answer to the second question below, the local authority is not bound to accept the opinion of the reviewing persons. If the local authority during the currency of a direction of the High Court, directing the local authority to keep the child in secure accommodation, think that the child should be transferred out of secure accommodation as a result of advice given by a review panel, it is the duty of the local authority to apply at once to the High Court for further directions. They cannot take the step of terminating the placement without further directions from the High Court.

There is nothing in the judgments of the House of Lords in *A v Liverpool City Council* (1981) 2 FLR 222, or *Re W (A Minor) (Care Proceedings: Wardship)* [1985] FLR 879, inconsistent with these propositions, because the relevant statute makes the exercise by the local authority of their powers under ss. 18, 19, 21 and 22 of the Child Care Act 1980 subject to any directions given by the court: s. 43(5) of the Matrimonial Causes Act 1973.

Likewise, it was the duty of the local authority to apply to the High Court for further directions as to the future of the child after the existing directions terminated on 17 June 1985.

The second question

What is the effect of the communication to the local authority of a view by the persons appointed to review that the continued placement in secure accommodation is not appropriate?

Regulation 17 of the Secure Accommodation (No. 2) Regulations 1983 confines itself to specifying the function of the persons appointed: reg. 17(1); and to stating whose views they shall ascertain and take into account: reg. 17(2).

By reg. 17(3), the local authority is under a duty, if practicable, to inform all those whose views are required to be taken into account under para. (2), of the outcome of the review. It is implicit in the regulation that the persons appointed to carry out the review must communicate their views on the matters about which they have to be satisfied. Save for the duty to inform others in reg. 17(3), the regulations are silent about the duty of the local authority after learning the views communicated by the reviewing persons.

We endorse without qualification the finding of Sheldon J in *M v Lambeth Borough Council (No. 3)* [1985] FLR 1167 at pp. 1171G to 1172F upon the relationship of the 'review panel', and the local authority. Where a child is a ward of court, the local authority cannot take any step inconsistent with the court's current direction without applying to the High Court for further directions. The local authority are not bound to accept the advice of the 'review panel'. If, however, the local authority agree with the view expressed by the review panel to the effect that the criteria no longer apply, or that continued placement in secure accommodation is no longer appropriate, they should forthwith apply to the High Court for further directions.

The third question

The statutory forum for deciding whether the criteria set out in s. 21A of the Child Care Act 1980 apply in respect of the child is the juvenile court and the Crown Court on appeal. It is anomalous that, in the case of a ward of court, the High Court has not been given the power to decide the same question. Unless and until the Act is amended, the ward is subject to a circuitous procedure which may involve the High Court, upon an application for directions, having to consider the very questions which have then to go for decision to the juvenile court.

We respectfully agree with those judges who have expressed dismay that the legislature has, probably by inadvertance, exposed the children concerned to such multiplicity of proceedings. The sooner it is corrected, the better. However, on the legislation now on the statute book, the juvenile court and the Crown Court on appeal alone have jurisdiction to decide whether the criteria exist. Where leave has been sought from the High Court for the local authority to make such an application to the juvenile court, clearly the juvenile court has the right and duty to satisfy itself that leave of the High Court has been sought and granted. The High Court is clearly entitled to include in its directions guidance to the local authority as to the material to be submitted to the juvenile court.

But we respectfully differ from Sheldon J where he held that the juvenile court would find it helpful to know the High Court's findings on the very questions which the juvenile court alone has jurisdiction to decide. We appreciate that Sheldon J was careful to emphasize that the weight that they attached to the findings of the High Court was largely a matter for them. We would prefer to state that the weight that they attached to any material before them is entirely for them, and we respectfully doubt

whether they, as an independent statutory forum, ought to be influenced by the view of another tribunal, however august.

For those reasons we consider that it would, in future, be better to exclude from the order giving leave to apply, any findings of the High Court on the matters within the exclusive competence of the juvenile court under s. 21A. We add that we have sympathy with the view of Sheldon J with which we find ourselves compelled to disagree. The remedy, in our view, lies in the amendment of the Act so as to give the High Court the jurisdiction in a wardship case to exercise the functions presently committed solely to the juvenile court and to the Crown Court on appeal.

The appellant also submitted that Sheldon J was wrong in the views that he expressed about the admissibility, in the juvenile court, of evidence given to the High Court, and of medical and psychiatric reports, without the attendance in person of the maker; and of the views expressed in and the results of case conferences held from time to time by the local authority (other than by direct evidence of eye-witnesses of past events).

It does not appear that Sheldon J gave any directions in these matters of evidence, which he recognized were matters for the decision of the juvenile court at its hearing. We content ourselves with saying that these proceedings are not party proceedings in the ordinary sense, and the strict application of the hearsay rule may be inconsistent with the proper exercise of the jurisdiction which s. 21A introduced into the juvenile court.

The observations of the Divisional Court in *Humberside County Council v R* [1977] 1 WLR 1251, indicate that there is room for relaxation of the hearsay rule where the nature of the enquiry shows that its strict enforcement would, or might, frustrate the efficacy of the statutory procedure.

Subject to these limited criticisms of the form of the order of the High Court, we dismiss the appeal.

Appeal dismissed with costs.

Solicitors: *R.J. Meller*, Chief Solicitor, Lambeth Borough Council;
Hodge Jones & Allen, agents for *Urquhart, Knight & Boughton* for the mother;
Official Solicitor;
W.I. Murray, City Solicitor, Liverpool City Council.

B.C.