JUDICIARY OF
ENGLAND AND WALES

THE QUEEN ON THE APPLICATION OF HC
(A CHILD, BY HIS LITIGATION FRIEND CC)
-V-
SECRETARY OF STATE FOR THE HOME DEPT
AND
COMMISSIONER OF POLICE OF THE METROPOLIS

HIGH COURT (ADMINISTRATIVE COURT)

25 APRIL 2013

SUMMARY TO ASSIST THE MEDIA

[1]* Four weeks after his 17th birthday at 3.55 p.m., on 19 April 2012, the claimant was arrested on suspicion of robbery of a mobile phone on a bus. Shortly after he was taken to Battersea Police Station he asked that his mother be informed. That was not allowed. She did not learn that he was in custody for about four and a half hours after he had been arrested, at 8.30 p.m. She was not allowed to speak to him. The claimant was released after 11½ hours in custody, on 20 April 2012. One month later he was informed by letter that his bail was cancelled. No charges were ever brought against him. The claimant had never been in trouble before.

[2] The police applied Code C of the Code of Practice under the Police and Criminal Evidence Act 1984. Both the Police and Criminal Evidence Act 1984 and the Code permitted the police to treat a 17 year-old as an adult.

[3] This application raises the question whether it was lawful for the Secretary of State to refuse to revise the Code so as to prevent a future similar experience to that suffered by this claimant and, so the court was told, by many other 17 year-olds. Parents of 17 year-old detainees have provided evidence in support of this claim.

[4] Most of the statutory provisions relating to criminal justice draw a line between those who have reached 18 and those under that age. Such provisions treat those under 18 differently from adults. But when those aged 17 are taken into custody by police for questioning, they are treated as adults. This is described as an anomaly by those with the greatest experience of the treatment of detainees, HMI Constabulary, HMI Prisons, HMI Probation and others. Their report in 2011 recommended that a 17 year-old should not be treated as an adult.

[30] The overriding principle governing the treatment of 17 year-old detainees, if they were regarded as children, would be that their best interests would be a primary consideration.

[32] Following the Criminal Justice Act 1991, save in respect of detention and cautions, the criminal justice system, through the youth justice provisions of the Crime and Disorder Act

1998 (the 1998 Act), has introduced a coherent youth justice system with the aim of preventing offending: this is applicable to all children and young people under the age of 18 (s.117(1) 1998 Act).

[44] The report, prepared in order to give information to the Joint Committee on Human Rights as to the extent to which UNCRC rights are not already protected by law (*Department for Children, Schools and Families, the UNCRC: How Legislation Underpins Implementation in England, March 2010*) reveals that the government wrongly believed that special provisions were in place in relation to juveniles, that is, all those under 18, whilst at a police station.

[47] There can be no question but that the treatment of 17 year-olds as adults when arrested and detained, under Code C, is inconsistent with the UNCRC and the views of the United Nations Committee of the Rights of the Child.

[51] There is a substantial body of domestic opinion as to the need not to treat such detainees as adults.

[55] Concern about the anomalous position of 17 year-olds detained in police custody is expressed by the Chief Executive of the National Appropriate Adult Network (NAAN), Elizabeth Pritchard, and by the Children's Commissioner appointed by s.1 of the Children Act 2004 with the function of promoting the interests of children in England. Those aged 17, given the definition of children under the 2004 Act, come within the scope of her responsibilities. When the former Secretary of State for Northern Ireland announced the change in legislation in Northern Ireland to extend the Youth Justice System to 17 year-olds by s.63 of the Justice (Northern Ireland) Act 2002, including the provisions of PACE and the treatment of 17 year-olds in police detention, one of the reasons given was to comply with the UNCRC.

[64] The Secretary of State's position is that there is no imbalance between a 17 year-old and the criminal justice system such as to require, for example, a parent to be informed or the assistance of an appropriate adult. The question, she suggests, is not whether a civilised justice system should afford a juvenile and a child special protection, but rather whether a 17 year-old ought to fall within the scope of that assistance.

[75] The need to include 17 year-olds within the scope of those afforded special protection in custody seems almost unanswerable. Certainly, whilst accepting that the arguments are evenly balanced, the Secretary of State has never advanced any detailed response to the Criminal Justice Joint Inspection Recommendations of December 2011.

[76] The Secretary of State does not seek to justify the anomaly; she merely says that she does not need to in the light of Parliament's persistence in treating 17 year-old detainees as adults.

[77] I suspect that that is, in the end, the answer. Where Parliament has failed to make the distinction between 17 year-old detainees and adults, it is difficult to say that the Secretary of State's failure to revise the Code is irrational. To do so would tend to suggest that the court takes the same view of the legislation. But that is not an end of the matter. Parliament has also imposed the duty on the Secretary of State under section 6(1) of the Human Rights

Act 1998 not to maintain a Code which is incompatible with a Convention right. To invoke the Act is constitutional, to challenge the legislation for incoherence is not. For reasons which follow, I need not reach any concluded view on irrationality.

[80] Once it is accepted that Article 8 is engaged, the Secretary of State cannot resist the application of the principles contained in the UNCRC. It should be recalled that the Home Department, over 11 years ago, accepted that:-

"Where children in custody are concerned the provisions of the Convention (UNCRC) are available to inform the content of ECHR Article 8…"

[84] It is difficult to imagine a more striking case where the rights of both child and parent under Article 8 are engaged than when a child is in custody on suspicion of committing a serious offence and needs help from someone with whom he is familiar and whom he trusts, in redressing the imbalance between child and authority. The wish of a 17 year-old in trouble to seek the support of a parent and of a parent to be available to give that help must surely lie at the heart of family life which, quite apart from Article 8, the government seeks to maintain and encourage.

[86] Once it is accepted that Article 8 is engaged then treatment of a 17 year-old as an adult seems to me to be not capable of justification.

[89] I conclude that it is inconsistent with the rights of the claimant and his mother, enshrined in Article 8, for the Secretary of State to treat 17 year-olds as adults when in detention. To do so disregards the definition of a child in the UNCRC, in all the other international instruments to which the Strasbourg Court and the Supreme Court have referred, and the preponderance of legislation affecting children and justice which include within their scope those who are under 18. The Secretary of State's failure to amend Code C is in breach of her obligation under the Human Rights Act 1998, and unlawful.

[94] This case demonstrates how vulnerable a 17 year-old may be. Treated as an adult, he receives no explanation as to how important it is to obtain the assistance of a lawyer. Many 17 year-olds do not believe they need any guidance at all. They demonstrate all the youthful arrogance of which many parents are aware. All the more need, then, for help and assistance from someone with whom they are familiar. If, at the heart of any policy in relation to 17 year-olds, lie the objectives of reinforcing strength of family ties, and development into a responsible adult with the assistance of a responsible parent, it is hard to see what Code C, in its treatment of 17 year-olds as adults, achieves other than to undermine such objectives.

[98] I conclude that the Secretary of State acted in a way which was incompatible with Article 8 of the Convention in failing to revise Code C so as to distinguish between the treatment of an adult detainee and a detainee under the age of 18. Article 8, read with UNCRC, requires a 17 year-old in detention to be treated in conformity with the principle that his best interests were a primary consideration.

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