



14 July 2010

## PRESS SUMMARY

### **A (Appellant) v Essex County Council (Respondent) [2010] UKSC 33**

*On appeal from the Court of Appeal Civil Division [2008] EWCA Civ 364*

**JUSTICES:** Lord Phillips (President), Lady Hale, Lord Brown, Lord Kerr, Lord Clarke

### **BACKGROUND TO THE APPEAL**

This appeal case centred around whether a local education authority has a minimum legal obligation to provide all children with an effective education, taking account of their special needs and regardless of the demands that this has on resources.

“A”, a man now aged 21, is severely autistic, suffers from epilepsy, and has grave learning difficulties. As a boy, he attended a special school. In 2001, when he was aged 12, teachers at the school expressed concern about his behaviour and the school’s ability to deal with him. He would self-harm, would suffer from regular epileptic fits in spite of medication, was doubly incontinent, had no concept of danger, and required constant supervision.

In January 2002, A’s parents were asked not to bring him into school for health and safety reasons. It was at that time intended that he should receive an urgent residential medical assessment but this was delayed. Meanwhile the school sent work and activities for A to do with his parents at home and provided him with some weekly speech and language therapy sessions. Neither the Council nor A’s former school was able to provide a home tutor who was qualified or able to meet A’s needs.

The assessment eventually took place in September 2002. It recommended that A should be placed in a 24 hour residential school specifically for children with high levels of challenging behaviour. Between October and December the Council wrote to a number of schools seeking a placement for A, but without success. Meanwhile A’s condition continued to deteriorate. A residential school placement did not finally become available under the end of July 2003.

When, in July, he took up his place at his new school, his overall health and behaviour started to improve. He since received an appropriate education. He left the school in the summer of 2008 and now lives in residential therapeutic accommodation.

Article 2 of the First Protocol to the European Convention on Human Rights (“A2P1”), made part of UK law by the Human Rights Act 1998, guarantees that no person shall be denied the right to education. In this case, relying on A2P1, A sought damages from Essex County Council arguing that, between the period January 2002 to July 2003, his right to education was infringed.

The lower courts (High Court and Court of Appeal) had both decided that, since A’s case had no realistic prospect of succeeding, it should be “struck out”. That meant that A could not seek to prove his claim at a full trial of the evidence. A appealed to the Supreme Court against this decision. A also appealed against a ruling that he should not be allowed to pursue his claim because he had brought it outside of the legal time limit for the bringing of such claims.

A’s case raised the following important issue of principle. Does A2P1 impose a minimum obligation to provide a child with an education that is effective having regard to his special needs, regardless of the demands that this makes on resources? A argued that it does, and that this mirrors the public law obligation imposed by statute in England and Wales. A argued that for the 18 months he was denied this right, because his special needs were not met.

A also made an alternative argument. He said that A2P1 entitled him to such facilities as were available in the 18 month period, even if these were not adequate to meet his special needs, and that there had been a failure to provide these.

## **JUDGMENT OF THE COURT**

*The appeal was dismissed. A majority of three to two Justices (Lords Clarke, Phillips and Brown) held that on the principal issue it was not arguable that A2P1 gave A an absolute right to education that met his special needs during the 18 months. A full trial could not be allowed to proceed on that basis. The time taken to find a school that met these needs was attributable to limitation of resources. Even if the delay had been attributable in part to administrative shortcomings, this would not have amounted to a breach of A2P1.*

*On the alternative argument, a different majority, (Lord Phillips, Lady Hale and Lord Kerr) held that A might have been able to establish a breach of A2P1 at a full trial in the form of a failure to provide educational facilities that were available that would have mitigated the consequences of the failure to meet A’s special needs during the 18 months.*

*However a majority (Lord Phillips, Brown, Kerr and Clarke) held that it would not be right to extend the one year time limit to enable A to bring his claim. He is unable to pursue his claim at a full trial.*

## **NOTE**

**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. Judgments are public documents and are available at: [www.supremecourt.gov.uk/decided-cases/index.html](http://www.supremecourt.gov.uk/decided-cases/index.html)**