

In the Court of Appeal

Billy Bunter (Appellant)

-v-

St Basham's (Respondent)

Billy Bunter is a sixth form student at St Basham's, a private boys' boarding school in Surrey. Billy attends the school under the Government's assisted places scheme. The statutes of the school provide that any decision of the headmaster is to be considered final and is not to be subject to any appeal.

In November 2000, Billy was called to see the headmaster of the school, Mr Whacker. Mr Whacker presented Billy with the text of an article written by Billy and which had been published in the school's termly magazine *The Bash*. The article was an attack on Mr Whacker, stating that he was incompetent at running the school and suggesting that he gained pleasure from caning boys at the school, particularly the younger ones.

Mr Whacker told Billy that he considered the article to be highly offensive and insubordinate. He said that he would punish Billy with four strokes of the cane in front of the whole school at morning assembly the next day. At that point, Billy telephoned his lawyer, Jeff Justice at Beloff, Lester & Co, on his mobile telephone. Jeff asked to speak to Mr Whacker. He told Mr Whacker that he was instructed to make an immediate application to the court for an injunction restraining him from caning Billy on the ground that this would be incompatible with Billy's rights under the European Convention of Human Rights ("the Convention").

After the call, Mr Whacker told Billy that he considered this to be an act of the greatest insubordination and that as a consequence Billy was now permanently expelled from the school.

The next day, Jeff appeared before Mr Justice Oldschool at the Guildford District Registry on an application by Billy for an order that:

1. Billy be re-instated into the school; and
2. Mr Whacker be restrained from caning Billy and/or disciplining Billy in any way in relation to the magazine article.

The grounds for the application were that:

1. the expulsion constituted an infringement of Billy's right to a fair trial under Article 6 of the Convention;

2. caning constituted an infringement of Billy's right not to suffer torture under Article 3 of the Convention; and
3. Billy had the right to freedom of expression under Article 10 of the Convention.

At the hearing, Mr Justice Oldschool dismissed Billy's application on the basis that St Basham's is not a public authority within the meaning of section 6 of the Human Rights Act 1998 ("the HRA"). For that reason, it has no obligation to act compatibly with the Convention and he could not intervene.

Billy immediately appealed to the Court of Appeal. The grounds of the appeal are as follows.

1. The judge was wrong to hold that St Basham's is not a public authority within the meaning of section 6 of the HRA. Alternatively, because the court is itself a public authority, it should in any case intervene to safeguard Billy's convention rights; and
2. Therefore, in light of the grounds stated in the original application, the judge should have granted the relief sought.

This problem is taken from the final of the ESU-Lovell White Durrant Mooting Competition 1999-2000, and was provided courtesy of the English Speaking Union.