

Number 31

Protection of vulnerable adults – recent court guidance

Issues relating to the care of vulnerable adults and children often attract media interest. Equally they often give rise to difficult issues for care home operators, although the POVA procedures are now better known than previously.

Although investigations and the necessary further steps are undertaken when POVA issues arise, the Courts do not often have to address the legal framework surrounding such care and two recent cases therefore provide useful guidance.

The extent of Court intervention

The High Court has an inherent jurisdiction to make orders in relation to the care of those who lack capacity to make decisions for themselves. However, there are limits to this jurisdiction as has been made plain in a recent case¹.

In this case a 21-year-old woman with hydrocephalus and spina bifida and an intellectual level of a 13 year old entered into a relationship with a 37 year old man. According to the case report he had “a substantial history of sexually violent crimes, including convictions for buggery of a minor for which he received a total sentence of 8 years imprisonment”. When the woman moved in to live with the 37 year old man the City Council took the view that it was not in her best interests to marry him and the Council applied to the Court for declaration under its inherent jurisdiction to this effect.

The Court’s inherent jurisdiction is most commonly used in connection with care issues. The common law doctrine of necessity allows the Court to make a declaration when a person does not have capacity to give or refuse consent to the particular act proposed. The classic example of this is medical treatment. The jurisdiction may also be used to decide where an individual should live.

However, in the Sheffield City Council case, the High Court rejected the application. The Court distinguished the situation where the Court was being asked to rule on the legality of a proposed action under the doctrine of necessity, as compared to the situation here where the Court was being asked to make an order in respect of something it had no power to control. As the Judge said “the lawfulness of surgical treatment depends either upon consent or, where the doctrine of necessity applies, upon best interests. The lawfulness of a marriage depends exclusively upon consent. Best interests are neither here nor there. It would therefore be a purposeless exercise for the [Court] even to embark upon an investigation of whether or not it is in an adult’s best interests to marry”.

The Court therefore refused the declaration on the basis that its inherent jurisdiction did not extend to cover such matters.

This is useful guidance to explain the situations where the Court would be prepared to consider making a declaration regarding the care of a vulnerable individual.

¹ Sheffield City Council v. E&S [2004] EWHC 2808

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A potential liability for POVA complaints?

Healthcare professionals are alert to situations which might amount to abuse and to report these. However, if, following investigation, the allegations are found to be groundless, is there a risk of compensation being sought by the accused? Might those who report such cases themselves face claims for so doing?

Although a case relating to unfounded allegations of child abuse, the Court has recently considered this issue².

In this particular case, injury to children had been suspected at the hands of their parents. Following an investigation, the allegations were said to be unfounded. The parents sought compensation including a claim for the psychiatric illness suffered as a result of the allegations.

The Court held as a matter of law that no duty of care was owed to the parents in such circumstances, even though the psychiatric illness had been caused by what turned out to be unfounded allegations of child abuse made by employees of the relevant NHS Trusts. The House of Lords recognised the different interests of children and their parents. Equally, health workers would be placed in a difficult situation if they were held to owe a duty of care to parents in such situations and it would not be in the public interest to seek to impose a duty of care or liability for making such allegations (unless these were made as a result of malice or bad faith). For example, a doctor is obliged to act in the best interests of his patient (in this case the child), not the parents. It is important that health professionals, acting in good faith in what they believe to be the child's best interests should not be subject to potentially conflicting duties to the child's parents. The Court was therefore not prepared to hold that a duty of care arose.

Although this case related specifically to allegations of child abuse, it is likely that a Court would adopt the same approach in relation to POVA allegations. That does not mean that allegations can be made without due regard for their appropriateness as it will be important to ensure that they are not made recklessly or with any bad faith or malice. Obviously defamation must also be borne in mind. Nevertheless, this case should provide some comfort to health care workers when POVA issues are suspected.

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September 2005

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Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

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² JD(FC) v. East Berkshire Community Health NHS Trust [2005] UKHL23