

Employment Briefing

Solicitors

STOP PRESS – Pova And Poca Lists

R (Wright) v Secretary of State for Health and Another

The House of Lords decided today that the procedure relating to Care Workers under Part VII of the Care Standards Act 2000 does not comply with the Human Rights Act 1998.

Care workers who look after vulnerable adults and are suspended or dismissed for misconduct, putting their charges at risk, are required to be reported to the Secretary of State by anyone who runs a care home or domiciliary service. Their names may then be placed provisionally on a list (the POVA list) which prevents them being employed to look after vulnerable adults. This provisional listing may or may not be confirmed. This scheme is modelled on the arrangements of those who work with children under the Protection of Children Act 1999 (the POCA list).

The effect of a provisional listing is to deprive those listed of the ability to work looking after vulnerable adults or children. There is no right, at present, for the individual who is reported to make representations before provisional listing.

The decision of the House of Lords is that the draconian effect of provisional listing, coupled with the delays before a full merits hearing can be obtained, is a breach of Article 6 of the Convention on Human Rights. This

creates a right to a fair hearing within a reasonable time when civil rights and obligations are determined. Accordingly the Court made a declaration that Section 82(4)(b) of the Care Standards Act 2000 is incompatible with Convention Rights. The declaration has no impact on the new scheme to be introduced by The Safeguarding Vulnerable Groups Act 2006 which was not dealt with by the Court.

The Government will have to devise an entirely different system before care workers are placed provisionally on the POCA or POVA lists. This new system must give the individual a right to make representations before they are provisionally listed. Also there are bound to be cases where there is a need for expedition and an appropriate procedure and resources will have to be made available, in order that such a hearing can take place quickly. The Court recognised that the purposes of the POVA and POCA lists were entirely proper, and that there is a need to protect vulnerable adults and children from risk. However, the current systems do not establish a fair balance.

Until the law is changed by Government, employers of affected care workers should continue to act and report as they do at present. The decision does not change those requirements.

Future practical consequences will include the following:

- Substantial compensation claims will be made against the State (but not employers)
- CRB searches will not reveal listings until after the new procedures have been completed
- References will assume a greater importance.

We will be holding a seminar in March to discuss all of the implications of this decision.

www.publications.parliament.uk/pa/ld200809/ldjudgmt/jd090121/wright-1.htm

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