

# Self-neglect, hoarding, executive functioning and the law

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# The legal framework

Care Act & NHS Act  
(services &  
safeguarding  
enquires)

Public law &  
common law (eg  
ECHR & inherent  
jurisdiction)

Mental Health Act  
& Mental Capacity  
Act

Antisocial  
Behaviour, Crime &  
Policing Act 2014

Housing &  
environmental law  
(eg Public Health  
Act 1936)

# The section 42 duty

The local authority must make enquires it considers necessary (or cause enquiries to be made) if has reasonable cause to suspect ...

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graph TD; A[The local authority must make enquires it considers necessary (or cause enquiries to be made) if has reasonable cause to suspect ...] --> B[Care & support needs]; A --> C[Abuse or neglect]; A --> D[Unable to safeguard themselves];
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Care & support needs

Abuse or neglect

Unable to safeguard themselves

# Hoarding, capacity & best interests

*AC and GC (Capacity: Hoarding: Best interests) [2022] EWCOP 39*

- AC, 92-year-old woman with Alzheimer's & alcohol-related brain damage
- Lived at home with son who had Asperger's, anxiety, OCD & depression
- Both AC & son diagnosed as having a hoarding disorder
- Council had become concerned that AC's care needs not being met due volume of items in the property & ongoing court proceedings
- AC admitted to hospital & whilst there, a suitable nursing placement was identified by the local authority & son
- Court declared that AC lacked capacity on residence and care, & it was in her best interests to move from hospital to a care home
- Also appointed an independent deputy

# The relevant information for making decisions as to items & belongings

- 1) Volume of belongings & impact on use of rooms
- 2) Safe access & use
- 3) Creation of hazards
- 4) Safety of building
- 5) Removal/disposal of hazardous levels of belongings

# The judge's decision

- AC lacked capacity to make decisions about managing her property and affairs & her items and belongings
- Trial care at home was not without risk but, on the evidence, it was a 'manageable risk' & in AC's best interests
- Conditions placed on the son eg to give access to care workers, work with the deputy, continue to see therapist & store shopping appropriately



... the aim of the court should not be to remove all risk but to create manageable risk and the court should not ignore the risk of institutional care failing by providing a sad and less than ideal outcome for AC.



# Executive dysfunction

- A person gives coherent answers to questions, but unable to put into effect the intentions expressed in those answers
- Colloquially, described as the person being able to ‘talk the talk’, but unable to ‘walk the walk’
- Associated with brain injury, autism, Prada-Willi syndrome, obsessive compulsive disorder and hoarding
- Umbrella term used to identify difficulties with a wide range of cognitive functions commonly thought to be situated in the frontal lobes of the brain

# Key issues for capacity assessments

- Can the person be supported to understand that there is a mismatch between what they say & what they do?
- The capacity assessment is not about the 'interview' (ie it may be 'performative')
- Important to gather information from other sources including friends & family
- Relevant information includes reasonably foreseeable consequences of a decision, or of failing to make a decision
- The inability to make the decision must be as a result of the person's executive dysfunction
- The outcome of the decision is not relevant to the question of whether the person has capacity

# Key issues for best interests

- Wishes & feelings expressed in the interview will always be a significant factor in executive dysfunction cases
- Best interests often involves making decisions & taking actions, such as developing strategies or providing services, to assist the person to implement their intentions
- Decision makers should not be risk averse when it comes to a best interests decision - the aim should not be to remove all risk but to create manageable risk with the aim of achieving the person's happiness (*Re MM (An Adult)* [2007] EWHC 2003 (Fam) at [120])
- As well as benefits to the person, best interests may also consider consequential benefits, such as protecting others from harm (*Y County Council v ZZ* [2012] EWCOP B34)

# Executive capacity & medical evidence

*Warrington BC v Y [2023] EWCOP 27*

- Y was a trans woman, in her early twenties (taking cross sexual hormones & ultimately wanted confirmation surgery)
- Diagnosed with autism as child, but whilst had difficulties with learning, remained in mainstream education
- In 2018, Y sustained serious injuries in a road traffic accident – including moderate-severe brain injury
- Led to ‘gaps in memory’, ‘practical issues with care’, ‘showering, changing clothes, cooking’, ‘cognitive fatigue and loss of energy’, & not engaging with all support offered
- Lived in rented bungalow, with a care package which amounted to a deprivation of liberty
- The central issue was whether Y had capacity to take decisions in relation to her care & residence
- Opinion was divided between Dr Grace, Consultant Neuropsychiatrist & Dr Todd, Consultant Neuropsychologist

# Medical opinions

- Dr Todd felt Y had ‘Dysexecutive Syndrome’, consequent on traumatic brain injury & ‘frontal lobe paradox’ typical of frontal lobe damage she can perform well in interview & test settings, despite marked impairments in everyday life (which is known as the ‘frontal lobe paradox’)
- Dr Grace felt Y’s impulsivity limited to times when she was ‘hyper-aroused’ & this pattern was present pre-injury & due to anxiety & autistic spectrum disorder traits

# Father's statement

- Before the accident she had a good vocabulary, however she now sometimes seems to struggle to find words.
- She is easily overloaded with information & forgetful, particularly her short-term memory which is really poor.
- She is unable to sequence things - she starts something but then cannot remember what to do next
- Before the accident she could carry things out in sequence eg she carried out MOT prechecks on her motorbike, taken it for MOT & filled in necessary paperwork at the post office

# The judge's decision

- Dr Todd's opinion was preferred – but noted that a dissociation between knowing or understanding & a failure to follow through or convert to action, is not, axiomatically, pathological
- Due to brain damage Y was unable to think consequentially & understand, retain or weigh information to make care & residence decisions
- The accounts given by the father very much reinforce Dr Todd's views & do not sit as comfortably with those expressed by Dr Grace
- Dr Todd's opinion *“unifies most of (though by no means all) the features of what is undoubtedly a complex evidential matrix”*



Executive dysfunction and frontal lobe paradox is ... not to be regarded as synonymous with the functional test for mental capacity. The former derives from clinical practice, the latter is the test prescribed by MCA. Neither is 'insight' to be viewed as equating to or synonymous with capacity. To elide those two would be to derogate from personal autonomy, every adult from time-to-time lacks insight into an issue or indeed into themselves.

Para.45



# MCA, inherent jurisdiction & self-neglect

*London Borough of Croydon v CD* [2019] EWHC 2943 (Fam)

- CD was diabetic & epileptic, poor mobility, incontinent of urine/faeces & unable to maintain his home environment
- Also, excess alcohol use & often inebriated at home
- Frequent incidents of falling in his flat, non-compliance with medication, severe self neglect, inability to manage personal care, activities of daily living & health
- His home environment deteriorated & care agency were unable to access the flat due to fears of cross contamination & infection
- Frequently called emergency services
- CD lives alone and socialises with friends in the same block of flats who equally have alcohol misuse problems

# Key issues

- CD's flat was soiled with human waste, putting him & visitors at high risk of infectious diseases
- He was continuing to drink alcohol and soil himself
- Carers unable to access his flat to provide the personal care CD required
- CD was not willing to change his ways or be moved to a safe environment where he could be supported with his personal care
- Local authority proposed a '20 point care plan' to the court which allowed its staff to gain access to CD's flat (1) to provide appropriate care for CD himself & (2) make his accommodation safe for human habitation

# The judge's decision

- All agreed care plan was in CD's best interests but disagreed over jurisdiction (local authority sought orders under IJ but OS suggested MCA)
- Judge held that he was both a vulnerable adult for the purposes of the inherent jurisdiction & lacked capacity to make decisions about his care
- The relevant impairment / disturbance being his psychiatric background of depression and/or dysthymia and/or his chronic alcohol abuse
- It was also noted that CD's capacity fluctuated
- Judge therefore made an order under the MCA, while also including in the order the finding that CD was vulnerable & so the IJ was an alternative route available to the local authority on the particular facts of the case

## My contact details

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**Thank you for listening**