

Hoarding & the Mental Capacity Act

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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)

Article 8 ECHR



Legal
powers
relating to
the person

Legal
powers
relating to
items &
belongings

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
- Son had LPA for both property and affairs & health and welfare
- 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 suspended the LPA for health and welfare

Decisions for the court

- Whether it was in AC's best interests to remain at the care home or return home with a package of care on a trial basis
- Whether the son had capacity to make decisions about his own property and affairs, AC's property and affairs, his own items and belongings, and AC's items and belongings
- Whether to appoint a deputy for AC's property and affairs (the son confirmed he would disclaim both LPAs)

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 (1): *Capacity*

- AC lacked capacity to revoke her LPA, & to make decisions about managing her property and affairs & her items and belongings
- Son lacked capacity to make decisions about managing his items & belongings (as opposed to his property and affairs more generally) & those of AC
- Approved the appointment of an independent deputy for property & affairs (son had also agreed to this)

Best interests: the arguments

- Council felt AC should remain at the care home – due to risk to health if she returned home & significant risk of breakdown of care plan
- On behalf of AC & son, argued that there had been ‘shift in power’ (eg appointment of a deputy) & AC would suffer significant distress if told she could never return home

The judge's decision (2): *best interests*

- Council had underplayed the distress that AC would suffer
- AC's consistent desire to return home was of 'magnetic importance' in this case
- Son 'more than anything else' wanted his mother to return home & made 'strenuous efforts' to address his own needs
- The 'shift in power argument' was 'powerful'
- Trial care at home was not without risk but, on the evidence, it was a 'manageable risk'



... 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.



Funding of the care package

- AC had significant funds & was a self-funder
- Court informed AC would be paying cost of the care package at home
- Council agreed to pay half the cost of retaining the placement at the care home for 10 weeks
- The judge felt it was reasonable for AC to pay the other half as it would benefit her to keep the placement open

Conditions on the son

- To be trained on moving and handling
- Should continue to see a therapist
- Must give full access to the care workers.
- Must not smoke in the property but can vape/smoke outside
- Keys must be left in a key safe
- Should store all shopping in appropriate places
- Fridge, cupboards, and bags of shopping to be checked regularly for out-of-date and rotten
- Should not be under the influence of alcohol when he is providing care for his mother.
- All serious problems relating to the property to be reported to AC's deputy immediately
- A cleaner to be employed to clean the home weekly
- Relevant professionals be allowed access to the home
- AC should not be left on her own for longer than two hours

Key learning points

- The presumption of capacity does not prevent assessments where there are grounds for concern
- It is vital to carefully identifying the “matter” requiring a decision
- It is vital to identify the information relevant to that matter
- Think about ‘executive functioning’ – can the person “use” the relevant information
- Evidence your conclusions – avoid opinion/views

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Thank you for listening