

News release

23 September

Somerset Social Services face landmark penalty for depriving daughter of home life for over a year - judgment sends a strong warning to other councils

Somerset v MK – Court of Protection, Deprivation of Liberty, Best Interests decisions, Conduct of a local authority

Judgment issued: 23 September

The anonymity of the person with a disability and any members of her family must be strictly preserved. Failure to do so will be a contempt of court.

Imagine returning from holiday to be told that your daughter, who had been in local authority-run respite care, is not allowed to return home with you. You might imagine that the County Council would have a system which would allow you to appeal such a decision by the social care team, and if it was found that they had made a mistake then your daughter would be able to return home promptly.

Sadly, this was not the case for one family in Somerset. Their eighteen year old daughter, who has severe autism and learning disability, was unlawfully deprived of her liberty by the County Council for thirteen months in one of the most serious cases of its kind in the UK.



The mother, father and grandmother were forced to do battle with the local authority care system for over a year between May 2013 and June 2014, before their daughter was returned home.

Catrin Blake, a solicitor specialising in mental health and Court of Protection law, with Butler & Co Solicitors in Taunton represented the mother.

“We sought to persuade the court that the local authority had acted unreasonably in its conduct of the proceedings and that consequently, there should be a departure from the normal position with regards costs. The usual position in court of protection proceedings is that no party will be liable to pay the costs of another. There are however exceptions to that rule and we successfully argued that this case was one of those exceptions. The way in which the local authority insisted on continuing to seek findings against the family or claim that the family could not meet MK’s needs, despite evidence to the contrary meant that we were able to argue that they had acted unreasonable. Consequently, His Honour Judge Marston made an order requiring the local authority to pay our costs.”

Catrin outlines the facts of the case and the lessons to be learned from today’s judgment by His Honour Judge Nicholas Marston **Case report**

<http://www.bailii.org/ew/cases/EWCOP/2015/B1.html>

Lessons to be learned – for families

“Parents and family members must not be afraid to challenge what is said by social workers,” says Catrin. “The adult social care system is incredibly stretched and mistakes do happen from time to time. A crucial feature of this case was that the council’s social workers failed to follow the correct legal procedure, and they did not inform the mother that she had a right to go to the Court of Protection to challenge the Council’s decision. Consequently, it was not until the council brought separate legal proceedings some months later that the mother was prompted to obtain legal advice.

Catrin advises “Anyone who believes that a vulnerable person is being retained in care unlawfully, should seek advice from a solicitor who specialises in Court of Protection law. Legal aid is often available to cover advice and representation in such cases.”

Lessons to be learned – for local authorities

“This case has been described as one of the most serious cases of deprivation of liberty that the Court of Protection has had to deal with. Legal costs are not usually awarded in Court of Protection cases, and even less frequently on an indemnity

basis where costs need only have been reasonably incurred and need not be proportionate. His Honour Judge Marston's decision to award costs, on an indemnity basis, for this complex and lengthy case, is a landmark decision which has a punitive impact on the Local Authority following what was described as a "significant degree of unreasonableness" on their part. It will no doubt send a strong message to other councils not to repeat such a mistake."

"The case highlights a clear lack of understanding on the part of the council into this crucial area of law and procedure, a lack of understanding which led to a vulnerable adult being deprived of her liberty and separated from her family."

"Local authorities need to invest in better training and monitoring for their staff. Since the *Cheshire West* case, this has become a fast-moving area of law and staff in social services and legal teams need to keep up-to-date with developments on a regular basis."

Background to the case

In a judgment published in September 2014 by His Honour Judge Marston, Somerset County Council was found to have unlawfully deprived P of her liberty for a period of thirteen months, In May 2013, P's mother went on holiday for two weeks, leaving her daughter in respite care funded by Somerset County Council.

The council decided to keep P in respite care following the discovery of bruising on her chest. In making this decision, the council relied on unsubstantiated allegations that the bruising had been caused within the home environment. They failed to take account of several other possible explanations, not least the fact that P had been observed hitting herself and that she had also taken a member of staff to ground whilst out on a school trip. Crucially, P herself was not given the opportunity to explain how the bruising had occurred

It was established that staff failed to properly investigate the evidence or communicate all the facts to the assessing medical staff.

The council had not put in place any procedure for the authorisation of Deprivation of Liberty – consequently there was no framework in place within which the mother could appeal to have her daughter returned when she returned from holiday. The

mother was not informed that she could have appealed directly to the Court of Protection.

As a consequence, the mother was unable to mount a legal challenge and was not at that time eligible for legal aid. Butler & Co solicitors supported the mother on a pro bono basis through this difficult time. Eventually, after more than six months, in December 2013 the County Council brought court proceedings and the mother was finally, following a further application to the Court, able to apply for non means tested legal aid. During the court case, the mother successfully challenged the claim that that the bruising had been caused at home.

The mother was also concerned that the respite care accommodation into which the council had moved P was entirely unsuitable for her complex needs. His Honour Judge Marston agreed the placement was inappropriate for someone with P's needs and that this would have been "stunningly obvious" to those involved.

In delivering his judgment that the council had unlawfully deprived P of her liberty, His Honour Judge Marston criticised the council for its systemic failure; corporate failings and its misguided philosophies. The council continued to pursue an unsubstantiated case against the family, and unreasonably refused to drop allegations made against them.

Thirteen months after she was prevented from doing so, P finally returned home to live with her mother in June 2014. A claim for damages is now being pursued on behalf of both P and her family.

Timeline / Key dates

- May 2013: bruises discovered on P. Mother reported them to various professionals. P was staying at a local authority funded respite placement
- May 2013: Mother advised that she could not take P home as there were concerns that the bruising to P had been caused at home. There was no legal framework in place to authorise P's detention
- May – November 2013 : the family were seeking to negotiate P's return home without success
- December 2013: the local authority issued legal proceedings in the Court of Protection and all parties become legally represented
- January 2014: The case comes before court where the seriousness of the issues are realised and the case is transferred to the High Court
- January – May 2014: The legal teams deal with volumous papers and disclosure and an independent social worker is instructed.

- May 2014 : His Honour Judge Marston hears the case over a 9 day period
- June 2014: His Honour Judge Marston delivers judgment and P is returned home shortly thereafter
- October 2014: The court hears applications for an order for costs to be made against Somerset County Council
- January 2015: His Honour Judge Marston makes an order for costs to be payable on an indemnity basis.
- September 2015 – Court of protection decision published

Other resources

London Borough of Hillingdon v Neary & Anor [2011] EWCOP 1377 (09 June 2011)

<http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/COP/2011/1377.html&query=neary+and+hillingdon&method=boolean>

Essex County Council v RF (2015) EWCOP 1, (2015) MHLO 2

[http://www.mentalhealthlaw.co.uk/Essex_County_Council_v_RF_\(2015\)_EWCOP_1,__\(2015\)_MHLO_2](http://www.mentalhealthlaw.co.uk/Essex_County_Council_v_RF_(2015)_EWCOP_1,__(2015)_MHLO_2)

Butler & Co Solicitors

Butler & Co Solicitors, was founded in 2005 by Michael Butler.

Michael qualified as a solicitor in 1992 in London, having graduated from Warwick University and the College of Law, Chancery Lane. Michael is a Higher Court Advocate, obtaining higher rights of audience in 2003, and specialises in mental health law, acting for detained patients all over the country.

Butler & Co specialises in the provision of advice and representation in the areas of mental health, family and Court of Protection law. The team of lawyers has particular expertise in dealing with vulnerable individuals who have mental health difficulties and who may be detained in hospital under the Mental Health Act.

Butler & Co has been reviewed as “excellent” in the area of mental health law by the Legal Services Commission.

Catrin Blake

Catrin is a solicitor with a long-standing interest in representing vulnerable adults and their families. Catrin leads the Court of Protection department and represent both those subject to proceedings, known as "P" and also their families and carers. Her work ranges from decisions dealing with financial affairs to those concerning health and welfare issues. She also advises clients in cases concerning urgent medical treatment and unlawful detention.

Catrin also represent patients detained under both civil sections and those detained under Part III of the Mental Health Act. She is a member of the Law Society Mental Health Tribunal Panel, members of which must have shown that they have and will maintain a high level of knowledge, skills, experience and practice in the area of mental health law.

For further information, contact Catrin Blake

T: 01823 692 800

M: 07540 685 812

Email: cb@butler-solicitors.co.uk