research
in practice

Legal Literacy Change Project

Exploring practice themes through case law

Dartington Trust

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This resource demonstrates how frequently arising adult social care challenges have been addressed in case law judgments. It:

- provides guidance on finding case law
- highlights legal cases that offer guidance on common practice issues
- provides an exercise through which a particular current practice challenge can be explored.

Readers will develop:

- an understanding of the significance of case law in providing guidance on how common themes in practice should be addressed
- skills in searching specific case law relevant to a current practice theme
- an ability to determine the significance of specific case law.

Several core competences that supervisors, managers and practitioners require involve legal literacy. For example, the ability to:

- understand and convey the nature and content of specific legal rules
- understand and convey the relevance of specific legal rules to practice
- analyse people's circumstances holistically and explore the range of possible legal knowledge that might apply in a given situation
- access information about adult social care law
- make and convey appropriate connections between adult social care and other areas of law
- analyse agency policies and procedures against the requirements of specific legal rules. (Preston-Shoot, 2003)

This task addresses all of these core competences but explicitly guides the study of legal cases to extract learning and apply it to current direct practice. It focuses on developing competence in recognising and framing specific legal questions or issues, in finding out more about these legal questions or issues, and in applying relevant information to the questions or issues that current work presents.

1. Finding case law

There are several websites that provide information about decided legal cases, some of which allow searches by sections of legislation, such as **section 9, *Care Act 2014***. They include:

- **Case Law and Legal Summaries** can be searched by clicking on the magnifying glass and typing in a legal term such as 'mental capacity' and selecting 'Adults' and 'CLLS' from the drop-down boxes.
- The **British and Irish Legal Information Institute** (Bailii) which can be searched for cases using a number of different search terms, including the name of the case, the full citation, the date and the topic.
- **39 Essex Chambers** which provides commentary on Court of Protection cases, searchable by reference to keywords. Other cases can be searched for by practice area, Administrative and Public being the most relevant to adult social care.
- **Mental Health Law** which provides a database organised into categories that can be searched.

It can be helpful to understand how case law references are constructed:

Understanding case law references

Case law is referenced using the following details:

- The name(s) of the parties.
- The date of the judgment.
- Either:
  - the law report series that has reported the case, and the volume number, or
  - a neutral citation denoting the court and case number.

For example:

- ***R (W) v Birmingham CC* [2011] 14 CCLR 516** (an example using a law report citation):
  - The court action was initiated by the Crown (R = Regina), acting on the application of the individual named W, against Birmingham City Council. The use of the R in the case name is an historical formality to denote the fact that some cases, such as judicial review, are technically brought by the Crown. The judgment was made in 2011. It is reported in volume 14 of the *Community Care Law Reports*, page 516. In more recent cases, citations using a law report are not often used. It is most often the neutral cituation (see below) that is used.
- ***R (McDonald) v Royal Borough of Kensington and Chelsea* [2011] UKSC 33** (an example using a neutral citation, i.e. a citation which uses the initials of the court that heard the case):
  - The court action was initiated by the Queen (R = Regina), acting on the application of the individual named McDonald, against the Royal Borough of Kensington & Chelsea. The judgment was made in 2011 and was case no.33 in the UK Supreme Court. A list of the most common neutral citations can be found below.

EWHC = England and Wales High Court

EWCOP = England and Wales Court of Protection

EWCA = England and Wales Court of Appeal

UKSC = United Kingdom Supreme Court

A searchable database of abbreviations can be found at:
www.legalabbrevs.cardiff.ac.uk

2. Using case law to assist with issues and themes in practice

Case law, ombudsman websites and the **Prevention of Future Death Reports** can be searched in relation to particular themes, practice dilemmas or critical incidents. This allows supervisors, managers and practitioners to read the case reports and extract what may be applied to current practice.

The examples that follow focus on some typical themes that may arise in practice:

- advocacy
- assessment, care planning and reviews
- deprivation of liberty
- equality and counteracting discrimination
- human rights
- inherent jurisdiction
- mental capacity
- resources and care and support packages
- wellbeing.

Accompanying each theme are some illustrative legal cases that can be read for the good practice points and the lessons learned from mistakes. They are not exhaustive but are illustrative of how case law can provide guidance to current practice.

When reading judicial decisions, it is helpful to have a set of questions in mind and to make notes on how the case report helps to answer them. These can include:

- What are the legal questions or issues at the centre of the case?
- How were these legal questions or issues resolved?
- What legislation, regulations, codes of practice or practice guidance were drawn on through the judgment and what was the significance of these?
- What does the outcome of the case tell social care practitioners and their supervisors and managers about this area of practice in this organisation?
- How might the learning from this case be applied to practice concerns currently under discussion at work?
- As a result of reading this case, what needs to be discussed in supervision, and why?

Choose one or more themes from the following list and read the suggested case law, taking your notes into the next supervision or team development session for discussion. You may find the tool below helpful in recording your reflections.

Questions	Record of your reflections
What are the legal questions or issues at the centre of the legal case?	
How were these legal questions or issues resolved?	
What legislation, regulations, codes of practice or practice guidance were drawn on through the judgment and what was the significance of these?	
What does the outcome of the legal case tell social care practitioners and their supervisors and managers about this area of practice in this organisation?	
How might learning from the legal case be applied to practice concerns currently under discussion at work?	
As a result of reading this legal case, what needs to be discussed in supervision, and why?	

Advocacy

- *Re AJ (DoLS)* [2015] EWCOP 5 – local authorities must ensure resources are available to protect a person's right to liberty and security (article 5 under the European Convention of Human Rights).

- *London Borough of Hillingdon v Neary and Another* [2011] EWCOP 1377 – local authorities must ensure they have statutory authority for their actions or obtain court authority for their proposals.

- *R (SG) v London Borough of Haringey* [2015] EWHC 2579 (Admin) – local authorities must arrange for independent advocacy where no-one else within a person's network can provide support.

Assessment, care planning and reviews

- *R (OH) v London Borough of Bexley* [2015] EWHC 1843 (Admin) – reviews and revised care and support plans must comply with statutory guidance.

- *R (D) v Brent Council* [2015] EWHC 3224 (Admin) – avoiding unreasonable delay.

- *R (Davey) v Oxfordshire County Council* [2017] EWCA Civ 1308 – how far resources can be taken into account when preparing care and support plans - what is a lawful plan?

- *R (Perry Clarke) v London Borough of Sutton* [2015] EWHC 1081 – unlawful decision-making and breach of right to a private and family life in approach to assessment and care and support planning (article 8 under the European Convention of Human Rights).

Deprivation of Liberty Safeguards

- *Re AJ (DoLS)* [2015] EWCOP 5 – ensuring resources are available to protect a person's right to liberty and security (article 5 under the European Convention of Human Rights).

- *London Borough of Hillingdon v Neary and Another* [2011] EWCOP 1377 – local authorities must ensure they have statutory authority for their actions or obtain court authority for their proposals.

- *Essex County Council v RF* [2015] EWCOP 1 - there must be lawful authority for removing a person from their home and depriving them of their liberty.

- *Somerset County Council v MK* [2014] EWCOP B25 – unlawful deprivation of liberty and inadequate safeguarding investigation.

- *SR v A Local Authority* [2018] EWCOP 36 – restrictions sought by a local authority to prevent contact between a husband and wife were not authorised by the Court of Protection.

Equality and counteracting discrimination

- *R (LH) v Shropshire Council* [2014] EWCA Civ 404 – consultation must be adequate and fair when people with care and support needs, relatives and workers are affected by proposals to close or reconfigure provision.

- *R (Michael Robson) v Salford City Council* [2014] EWHC 3481 (Admin) – reasonable consultation and decision-making regarding closure of service provision.

Human rights

- *R (Bernard and Another) v London Borough of Enfield* [2002] EWHC 2282 – when failure to provide services infringed the right to a private and family life (article 8 under the European Convention of Human Rights) - the importance of timely decision-making.

- *Re Z (An Adult: Capacity)* [2004] EWHC 2817 (Fam) – duty to investigate when a person may be choosing a self-harmful path.

- *Essex County Council v RF* [2015] EWCOP 1 – where a failure to obtain a lawful authorisation for a deprivation of liberty results in a violation of Article 5 (right to liberty) and Article 8 (right to a private and family life).

Inherent jurisdiction

- *DL v A Local Authority* [2012] EWCA Civ 253 – the court authorising intervention where there is evidence of coercive and controlling behaviour or undue influence impacting on decision-making by otherwise capacitous adults.

- *London Borough of Redbridge v G* [2014] EWCOP 959 – use of the High Court's inherent jurisdiction and subsequently the Court of Protection in relation to protecting an older person from financial abuse and undue influence.

- *Southend-on-Sea Borough Council v Meyers* [2019] EWHC 399 (Fam) – nature and reach of inherent jurisdiction; when unwise decisions of capacitous adults might be overridden by the courts.

Mental capacity

- *Milton Keynes v RR* [2014] EWCOP B19 – unlawful removal from home, breaches of human rights, and failure to adequately investigate safeguarding concerns.
- *PC and NC v City of York* [2013] EWCA Civ 478 – what is relevant information to include in mental capacity assessments.
- *Re P* [2017] EWCOP B26 - what to take into account in best interest decision-making.
- *Westminster City Council v Sykes* [2014] EWCOP B9 – balancing risks in best interest decision-making.
- *GW v A Local Authority* [2014] EWCOP 20 – illustrating the value of a functional assessment undertaken through real world observation (here undertaken by an occupational therapist) in the context of assessing mental capacity.

Resources and care and support packages

- *R (Davey) v Oxfordshire County Council* [2017] EWCA Civ 1308 – how far resources can be taken into account when preparing care and support plans - what is a lawful plan?
- *R (KM) v Cambridgeshire County Council* [2012] UKSC 23 – reasons should be given for decisions regarding resource allocation for how eligible needs are to be met.
- *R (Antoniak) v Westminster City Council* [2019] EWHC 3465 (Admin) – a lawful needs assessment should not take in to consideration any ways in which a person's needs are already being met by other organisations or people.

Wellbeing

- *R (Davey) v Oxfordshire County Council* [2017] EWCA Civ 1308 – how far resources can be taken into account when preparing care and support plans - what is a lawful plan?
- *R (JF) v London Borough of Merton* [2017] EWHC 1519 – assessments and care and support plans must adhere to requirements in statutory guidance.
- *R (VI) v London Borough of Lewisham* [2018] EWHC 2180 (Admin) – care plans must not be resource-led but have a reasonable chance of meeting identified needs.

When you have researched the themes listed above, in a supervision or team development session:

- Identify a person with whom you are working and decide which issues or themes their situation presents (other than those listed above).
- Take those themes and conduct your own research to find and read relevant recent case law.
- Take the resulting notes and observations back into supervision or team development for discussion about their implications for practice with the person in question.

References

Preston-Shoot, M. (2019). *Making Good Decisions: Law for Social Work Practice*, 2nd Edition. London: Macmillan/Red Globe Press.

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