Hoarding, mental capacity and covert medication

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People have a right to private and family life (The Human Rights Act 1998 Art 8 ECHR). The state cannot interfere in the home or in personal medical decisions without significant justification.

But what if people are self destructive? Especially if they have mental health or mental capacity issues?

- Hoarding - can the we justify intervention in a persons home if they create health and safety risks for individuals and neighbours by hoarding?

- Medication - what about people who refuse essential medication, putting their life at risk?

Hoarding – a problem in social care

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

Her Honour Judge Clayton

A Local Authority v X ***[2023] EWCOP 64***

Mrs Justice Theis

Note: hoarding is not about being a collector of bric a brac or messy, nor is it a lifestyle choice. Hoarding involves a strong emotional attachment to objects which lack financial value or an obvious sentimental value.

It can include clothes, food, used, cartons, old computers or other objects OR live animals in numbers which put the animals at risk.

Hoarding Disorder is a medical condition whose symptoms can include

1. Acquiring and failing to throw out large numbers of items which lack value and are considered rubbish by others.

2. “Cluttering” so that living space in a home is significantly reduced.

3. Causing significant distress or impairment of a person’s social life.

The Care Act 2014 statutory guidance identifies self neglect as abuse. This includes hygiene, health and surroundings.

The Royal College of Psychiatrists identifies Hoarding Disorder as an illness. But it can also be associated with mental illness, depression, dementia, bipolar disorder, learning disabilities or OCD Obsessive compulsive disorder.

How to tackle Hoarding

Hoarding is anti-social behaviour issue.

1. Anti-Social Behaviour, Crime and Policing Act 2014 applies in serious cases.

- s.2(1)(c) provides that any conduct capable of causing housing-related nuisance or annoyance to any other person amounts to anti-social behaviour.
- Clutter leading to unhygienic conditions or rodent infestations would be "*housing-related nuisance or annoyance*". The hoarding of combustible materials, such as newspapers increases the risk of a fire and can block a fire escape route.

2. Where a person is a tenant a private landlord or LA may consider

a. Requiring a tenant to comply with the tenancy agreement. Most require property to be kept tidy and clean, and to refrain from anti-social behaviour.

b. Seek an injunction to clear clutter or to remedy the breach of a tenancy agreement.

Tackling Hoarding

3. LA's may pursue possession proceedings:

a. ***Housing Act 1985*** Grounds 2 or 3 relating to a tenant causing a nuisance/annoyance to people in the locality and the condition of the property deteriorating.

b. In severe cases the ***Housing Act 1988*** may allow a private landlord possession, relying upon one of the grounds listed under Schedule 2.

Grounds 12 (breach of tenancy obligation),

Ground 13 (deterioration in the condition of the property or common parts),

Ground 14 (causing a nuisance/annoyance to people in the locality) and/or

Ground 15 (deterioration of furniture).

Other approaches

4. Public Health Act 1936 – Environmental Health

- s.79 – Require removal of obnoxious matter by occupier. Usually only used for outside premises.
- s.83 – LA notice to clear filthy or verminous premises..
- s.84 – cleansing or destruction of filthy or verminous articles. Requires occupier to disinfect or destroy articles at their expense.

5. Prevention of Pests Act 1949 s.4 – require action to clear mice and rats. LA can do it in default.

6. Environmental Protection Act 1990 s.79 – statutory nuisance. Where fumes, gases or deposits cause of health risk.

7. A Vulnerable Person with capacity – consider application to the High Court for a temporary order to carry out works. ***Re SA (Vulnerable Adult with capacity: Marriage), [2005] EWHC 2942 (Fam) [2006] 1FLR 867 at 77.***

Not all hoarders have mental illness or mental capacity issues. But many people with hoarding issues do and some are undiagnosed.

Sometimes hoarding is harmless. But it can also be dangerous.

Mental health issues

- If a person has mental health issues s.2 MHA 1983 can allow a hoarder to be admitted to hospital ***for assessment*** against their will, provided they suffer from a mental disorder and may be a threat to themselves or others.
- A mental health order or a magistrates warrant may be applied for if they resist being removed from their home.

Mental capacity

A person who has mental capacity can legally hoard. This may be an *unwise decision* within s.1(4) MCA 2005 but we are all entitled to make unwise decisions.

The usual issue on capacity is whether a person has the mental ability to "*use and weigh*" decisions to keep or remove items [s.3(1)(c) MCA 2005]

Re: AC and GC (Capacity: Hoarding: Best Interests) [2022] EWCOP 39 HHJ Clayton

- AC - aged 92 had Alzheimer's and lacked capacity.
- GC, her son, was in his 50's with Asperger's Syndrome, anxiety and OCD.
- Both were diagnosed by an expert as having a hoarding disorder.
- GC had capacity on most issues – but on borderline lacked it on hoarding.
- AC had been moved to a care home after being left at home by GC.

- LA refused to allow AC go home "to die" unless the home is safe and clean.
- Both AC and GC refused to allow clutter to be removed.
- LA asked COP to order the home cleaned to allow AC to return.
- LA got Fire Service report - substantial fire risk.

The Mental Capacity Act 2005 s.1

(2) *A person is assumed to have capacity unless it is established he lacks it.*

3) All practicable steps to help him decide must have been taken without success.

(4) A person cannot be treated as unable to decide merely because he makes an unwise decision.

(5) A decision made under the Act on behalf of a person lacking capacity must made, in his ***best interests****.*

(6) Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is ***less restrictive of the person's rights and freedom*** *of action.*

Capacity is decided by an assessment addressing issues in *s.2 & s.3 MCA 2005*

- P lacks the understanding to make a decision - "**THE FUNCTIONAL TEST"**.

  The functional test is decided on the basis of whether P can

  (a)Understand information

  (b) recall information

  (c) Use and weigh information

  (d) communicate.

- There is an impairment or disturbance in the functioning of P's mind or brain. **'THE DIAGNOSTIC TEST'**
- And there needs to be a link between the diagnostic test and the functional test. This is called either "**the causative nexus**".

<u>s.4 MCA 2005 Best Interests</u> – Decisions on behalf of a person lacking capacity must be made in their best interests.

- The social worker concluded it was in AC's best interests to remain at the care home because of the risk of self-neglect if she went home and refuse care from carers, and the high risk of GC continuing to hoard in the property in light of the reports of the professor of psychology. GC has only very recently started therapy to address his hoarding.
- There was also an issue about the impact on GC's mental health of his belongings being taken away, which was a necessary prerequisite to any return home for AC even being a possibility.
- The judge said: "*There is no doubt that the article 8 ECHR rights of AC and GC are engaged, in that each have a right to respect for private and family life and, when undertaking a best interest analysis, the exercise does require consideration of the factors set out at MCA 2005 section 4*."

HHJ Clayton decided:

AC and GC's Art 8 ECHR rights were engaged.

She could "*not be satisfied that a final placement at the care home would be an appropriate and justifiable interference*" with AC's article 8 rights.

She agreed at [34] that a trial at home is in the best interests of AC.

"the consistency of her wishes to return ...home, wanting to be where she has looked after people for three generations, where she can remember the past.

"…she has a strong desire to continue to live with her son, who moved back home to help care for her when her husband died, some 11 years ago, where she has familiar things around her, which takes on an even greater significance with someone who is likely to have a hoarding disorder herself. There is no doubting the importance to her of her relationship with GC, nor her strong desire to become reunited with her pet cat, Jasper.

"It is these issues which are of magnetic importance in this case, when I bear in mind, she has lived in her home for 40 years, that she is now 92 with straightforward care needs and a limited life expectancy."

HHJ Clayton decided a trial of care at home had riskof more hoarding, but it was a manageable risk.

GC allowed some cleaning, though he found it distressing.

AC went home.

A Local Authority v X *[2023] EWCOP 64*

Mrs Justice Theis

- X had lived in a rented maisonette for 27 years. Had OCD and Hoarding Disorder.
- Rejected help. Over 2 years attempts to address hoarding failed. Environmental Health had served notices (s.87 of the Public Health Act 1936) and warrants to enforce clearance, but access was refused, with X threatening self-harm.
- LA sought COP order to temporarily remove X.
- Importantly, all reasonable efforts been exhausted to try do things in a way less restrictive of X's freedom (s.1.6 MCA 2005).

Theis J said courts should take a holistic approach that looked at X's capacity to make decisions about her residence, her care/support and her items and belongings.

Decided the relevant information included:

1. the obligations under the tenancy agreement;
2. what areas X needed support with;
3. what type of support available;
4. what were the consequences if X did not have that support or she refused it;
5. the volume of belongings and the impact on use of rooms;
6. safe access and use;
7. creation of hazards;
8. safety of the building and
9. the removal or disposal of hazardous levels of belongings.

Theis J held that the evidence established, because of her mental impairments, X

- Could not "*use and weigh*" the impact of her actions on the tenancy agreement.
- Could not make decisions about her property and financial affairs.
- Whilst removal would cause distress & could tip her into suicide, the fire risk was substantial, the hoarding level at 8/9, and the risk to X of falling and help being unable to get to her, remained significant.

Theis J concluded <u>all reasonable help had been offered</u>. Further help was unlikely to bring a change.

It was in X's best interests to be removed (with restraint as a last resort) and deprived of her liberty at a nearby supported living placement for a limited time to enable rubbish clearance to take place, with a plan to return her once the works required had been undertaken.

Mrs Justice Theis said.

“101. I also have to weigh in the balance whether any further steps can be taken that would be less of an interference in X’s Article 8 rights. Sadly, I have reached the conclusion that there is no further support that can be given that would bring about any real change…. The local authority, together with the medical and mental health professionals, have been patient, creative and resilient … over a number of years. … The action required to remove the clutter from the home can only take place in the absence of X.

“102. The move proposed in the clearance plan is for a limited period of time with a plan that enables X to return to her property, once the works required have been undertaken.”

…

“ 105. …X’s best interests are served by the local authority application being granted. …I readily accept the considerable risks…, bearing in mind her mental disorder and the suicide threats she has made. Those matters weigh heavily in the balance.

Having said that, I consider the balance is tipped the other way by what I regard as the substantial and increasing risks X would be left exposed to if this order was not granted. They are serious risks that would have a direct impact on X’s health and safety.

There is no prospect of any other step being taken that would bring about out any meaningful change.

The evidence set out in the detailed contingency plan includes provision that would seek to mitigate the impact on X of what is proposed by the multi- disciplinary approach….”

Conclusion

- An LA should first exhaust all less restrictive options before compulsory measures are sought.

- Where a person is borderline on capacity it may be important to identify the precise domain in which they lack capacity. In *Re AC and GC*, it was important to specify the hoarding decision regarding certain items because GC was generally able to make decisions on other things.

- In *An LA v X* a more holistic approach was taken to capacity which combined the information relevant to residence, care and hoarding.

Covert Medicati

Where there is no prefect outcome.

In April 2024 - the Court of A endorsed a decision by Pool end *covert medication* after years, despite A refusing to t needed medication voluntar

Judges must make difficult decisions and should choose best option in their view.

- A 23 year old woman –with diagnosis of mild learning, disability and Asperger's syndrome.
- Previous Judge HHJ Moir (now retired) found A lacked capacity to make decisions for herself on residence, care, medical treatment.
- She had epilepsy and took those meds **BUT also had Primary Ovarian Failure & refused to take meds.** Consequences were that she had not achieved puberty.
- A had lived with B until 2019 and been home schooled.
- HHJ Moir decided that the mother ["B"] should have convinced daughter to take the medication and was an adverse influence on daughter. Referred to an "enmeshed relationship"?
- HHJ Moir moved her into an LA placement in 2019 and in 2020 ordered covert medication in her food ("CM").
- Contact with mother restricted and all contact with mother stopped for 2 years.
- CM enabled A to reach puberty.

- A person with capacity can refuse medication, even if it goes against medical advice. (s.1(4) MCA 2005. McDonald J *Kings College Hospital, NHS Foundation Trust v C & V [2015] EWCOP 80*
- But if a person lacks mental capacity, then **covert medication** as possible. The case led to new COP Guidance on CM.
- This involves medicating a person without their knowledge, because they have refused treatment considered medically necessary – perhaps by disguising medication in food or drink or as another medication.
- Medicating without consent is a battery or assault under the common law and a breach of a person's Art 5 and Art 8 ECHR rights.

- **Sept 2022 Mum told about CM and puberty.**

- **But on a daily basis, A continued to refuse to take meds i.e. HRT**

- **Mother's position –**

  Let A come home and I will convince her to take HRT. Over years of detention and effort LA/MHS/OS have failed to convince her to take HRT.

- **LA/NHS/OS position -**

  The consequence for daughter of not taking HRT were serious. She would begin premature menopause at aged 25 with risk of bone and heart deterioration. Mother cannot be trusted because she does not really want A to take HRT. A must stay in care, contact with mother should be restricted and CM should continue indefinitely.

In April 2024 Poole J handed down a judgment. He said he doubted mother would convince daughter to take HRT so there were risks, but the infringement of liberty was disproportionate. He concluded at §82:

"Standing back and considering all the evidence and all the matters discussed in this judgment, I am satisfied that it is in A's best interests:

i) to return home to B's care.

ii) for CM to cease.

iii) for A to be informed that she has been covertly administered HRT and that it has been of benefit to her health. She has gone through puberty and that stopping HRT would be harmful to her health, whereas she will benefit from continuing to take it.

iv) to allow B to try to persuade A to take HRT voluntarily.

v) for support to A to be provided to her in the community, whilst she is living at home."

LA/NHS/OS applied to Court of Appeal.

CA agreed Poole J and refused the LA/NHS/OS application and daughter went home after 5 years in care.

In May 2024, CA said

a. Judges had to make difficult choices and
b. this decision had clear risks,
c. but life is not risk free.
d. Poole J had heard the evidence and formed his own view and
e. the CA agreed that this was a risky but necessary decision.

CM was ended and the daughter went home to live with her mother.

Conclusion

People who put themselves at risk can be the subject of public intervention.

Each case must be looked at and on its merits and justified.

The Courts have powers to intervene - but are reluctant to do so until the LA has exhausted less restrictive options.

Advice : devise a step by step plan to offer all the options and if they are rejected and there are serious risks to the person or to others then, take the matter to Court.

Questions?