

Court of Protection (A County Council v LW)

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Private Client analysis: This case considers the impact of an abusive relationship on a person's capacity to make decisions about residence and care. It provides practical advice for practitioners considering safeguarding responsibilities in the context of domestic abuse, including examples and guidance. Mr Justice Hayden emphasises the need to consider the cumulative impact of coercive, controlling behaviour. It was determined that LW lacked capacity to make decisions regarding her residence and care primarily as a result of the influence which her partner asserted over her. It was in LW's best interests to cease all contact with her partner, and eventually move from her current placement. The timeline for such measures was to be determined by LW's needs, not the exigencies of the litigation. Written by Elizabeth Fox, barrister, at Serjeants' Inn Chambers.

A County Council v LW and another [\[2020\] EWCOP 50](#) (22 July 2020)

What are the practical implications of this case?

It can be difficult in cases involving coercion to disentangle P's ability to make decisions from the influence another may assert. This case confirms that controlling behaviour may in fact render a person unable to make key decisions, beyond contact with the individual exerting the influence, as at para [13]:

'It is the influence that MG asserts over LW's fragile personality that compromises her capacity to weigh and evaluate the questions relating to her care and where she should live. This is compounded by her inability to understand her own mental health needs.'

These factors led all parties to agree that LW lacked capacity to make decisions regarding residence, care and contact.

Mr Hayden J provided a shrewd analysis of her partner's behaviour. Practitioners are urged not to dismiss this judgment as representing an obvious and extreme example, as stated at para [17]:

'[...]individual instances of behaviour, observed in isolation, do not always signal to the professionals the malevolent undercurrent beneath. Controlling and coercive behaviour of this kind requires an effective assessment of a pattern of behaviour, the impact of which is cumulative.'

The understanding of the cumulative impact of an individual's behaviour is 'crucial' to effective safeguarding. Several practical examples are provided, which may assist practitioners acting in similar cases.

Finally, this case highlights the advantages and disadvantages of supervised telephone contact—although supervised, LW's partner continued to abuse her via phone, and those supervising the contact were in the invidious position of sitting and listening to the abuse, without always fully appreciating its impact on her. It can however be inferred that evidence was derived from these telephone contacts which contributed to the court's determination in this matter. Such evidence is crucial in proving allegations in these types of cases.

What was the background?

LW, a 60-year-old woman with a history of mental health difficulties, had been placed at 'the G Unit' in July 2017. She was initially detained there under the [Mental Health Act 1983](#). When she was admitted, she was 'emaciated' and her personal hygiene was neglected. It was agreed between all professionals that the unit was not equipped to meet her needs.

LW wished to return to her home and live with her long-term partner, MG. LW's relationship with MG was described as 'the central challenge' to her life. Their relationship was considered to be abusive, exploitative, coercive and 'wholly inimical to LW's welfare'. Some of MG's behaviour had a 'sadistic component', including restricting LW's food intake—hence her emaciated appearance on admission in 2017—and requiring her to recite extensive prayers in a particular order, which made LW highly

agitated and anxious. LW also reported that MG made her smash her own piano apart so she could no longer play it, and forbade her from wearing underwear.

MG's manipulative behaviour had also affected LW's engagement with professionals. He was described as writing the 'script' as to what she should tell her doctors and carers. LW's entire team agreed that it would benefit her to cease all contact with MG.

The court was required to consider whether LW lacked capacity in relation to residence, care and contact. It was envisaged that the parties would be permitted to return to court to submit a finalised care plan.

What did the court decide?

The court determined that LW lacked capacity 'to take the interrelated decisions relating to contact with MG, where she should live and the nature and extent of the care she requires' (at para [13]). As capacity was determined, it was possible to progress the planning process, which had previously ground to a halt due to MG blocking the process.

The process included:

- the local authority to liaise with LW's property and affairs deputy to secure MG's eviction from LW's home, using best endeavours to minimise the risk of further damage to the property
- returning to court in due course with a finalised care plan

It was identified that the care plan was contrary to LW's expressed wishes. It was however observed by Mr Hallin, acting on behalf of the NHS Social Care Partnership Trust, that were the judge to permit LW to return to her flat with MG, he would be 'exposing her to a regime of insidious controlling and abusive behaviour which is both corrosive of her personal autonomy and entirely irreconcilable with her best interests' (at para [16]).

The judge agreed with all parties that LW would benefit from complete cessation of her contact with MG. MG was not a party to proceedings.

Finally, Mr Hayden J reminded lawyers that the way in which litigation is conducted must be in the best interests of P, observing, 'It is LW's needs that should drive the timetable not the exigencies of the litigation' (at para [14]).

Case details

- Court: Court of Protection
- Judge: Mr Justice Hayden
- Date of judgment: 22 July 2020

Elizabeth Fox is a barrister at Serjeants' Inn Chambers. If you have any questions about membership of LexisPSL's Case Analysis Expert Panels, please contact caseanalysis@lexisnexis.co.uk.

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