

HOW CAN THE PRIVATE AND VOLUNTARY SECTORS WORK TOGETHER TO PROTECT SERVICE USER RIGHTS?

WORKSHOP AIMS & OBJECTIVES:

The workshop will begin with a case study of the ways in which Enable Law work with the charitable and voluntary sectors in our mutual benefits and to ensure individuals' rights are upheld. This will be followed by a group discussion to consider how charitable, voluntary and private sector organisations could improve cross working and overcome challenges.

CASE STUDY: SARAH

Sarah is a 20 year old woman diagnosed with cerebral palsy and severe learning disability. She is quadriplegic and requires assistance with all personal care and repositioning etc. Sarah relies on a specialist wheelchair in terms of her posture management and mobilisation. She is also unable to reliably communicate. While Sarah is able to show her likes and dislikes on a basic level, she has been assessed as lacking capacity to make decisions in relation to her residence and care, as well as the contact she has with others.

Until recently Sarah was living with her mother and 2 of her 4 siblings at the family home. When living at home, Sarah attended college on a full time basis from Monday to Friday. Transport to and from college by wheelchair taxi was funded by the local authority. In addition, the local authority funded 1 morning visit and 1 evening visit per day from a domiciliary care provider to assist in meeting Sarah's personal care needs. The remainder of the time, Sarah's mother was responsible for meeting her care needs.

Safeguarding

However, a safeguarding alert was raised in response to concerns from the domiciliary carers supporting Sarah. The carers believed that Sarah's mother was neglecting her care needs. They reported being given an old paint pot filled with cold dirty water and a rough cloth to carry out her daily wash. The carers also noticed a significant amount of bruising on her limbs and back that they carefully documented. In addition to these concerns, the local authority had been made aware of a significant amount of criminal activity on the property including the dealing of drugs by some of Sarah's siblings. This had led to there being a number of police raids on the property that are reported to have caused significant distress to Sarah.

In order to safeguard Sarah, the local authority ultimately took the decision not to return her home one day after college. Instead, Sarah was taken to a local authority run supported living environment. Her mother was informed that she was safe and well but that she would not be returning until at least such time as an urgent safeguarding investigation had taken place. Sarah's family was not told where Sarah was residing and had no contact with her. At this point an Independent Mental Capacity Advocate ('IMCA') was instructed by the local authority to ensure Sarah's voice was heard in the course of the safeguarding process. The IMCA sought advice from Enable Law as to the safeguarding process.

Court of Protection Proceedings

The safeguarding process concluded that the majority of the alerts raised were substantiated and the local authority made an application to the Court of Protection to seek an order that it was in Sarah's best interests to remain residing at the local authority's supported living placement. Sarah was made a party to those proceedings but as she lacked capacity to conduct them, her IMCA was invited to act as her litigation friend. Her IMCA consequently contacted Enable Law to ask that we represent Sarah.



CASE STUDY CONTINUED

Sarah's mother and elder sister were also joined as parties to the proceedings and secured their own legal representation. They sought that Sarah be returned home and denied causing her any harm.

The proceedings progressed and included a lengthy fact finding investigation and hearing as to whether the safeguarding concerns could be considered as facts to be taken into account when considering whether it was in Sarah's best interests to remain residing at the supported living placement or to return home. After a 5 day hearing, like the local authority, however, the Court ultimately found the majority of the safeguarding concerns to be substantiated. Further, and in light of the substantiated concerns, the Court reached the view that it was in Sarah's best interests to remain residing at the supported living placement but for contact to be resumed between Sarah and her family members on a supervised basis. This was the outcome that we had sought on Sarah's behalf.

Clinical Negligence

During the course of the Court of Protection proceedings, it was noted in Sarah's records that there was a question mark over whether her cerebral palsy was caused by mistakes made at the time of her birth. An internal referral was made to the clinical negligence team who conducted an initial review and considered there to be some merit in fully investigating a potential claim.

Independent experts were consulted and it was established that when Sarah's mother was in labour, her delivery had been delayed contrary to NHS guidelines. It was established that the delay was a breach of the treating obstetrician's duty and that this had caused Sarah's cerebral palsy.

While investigations were ongoing and prior to the claim being concluded, we helped to signpost Sarah to services including:

- A local brain injury charity;
- Charity funding additional equipment;
- Benefits advisor; and
- Respite/funded holiday.

Negotiations began with the relevant NHS Trust and ultimately a multi-million pound settlement was awarded to Sarah. A professional Deputy for property and affairs from Enable Law was appointed to manage the funds, which allowed for Sarah to purchase the following over her lifetime:

- A specially adapted house that had ample room for Sarah and her care team;
- A 24 hour package of care from a bespoke team;
- Private therapies including OT, SALT and physio;

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WORKS WITH CHARITIES

- Round table discussions to facilitate networking
- Corporate partnerships
- Volunteering opportunities
- Support from wider teams for advice in relation to employment, property and GDPR issues
- Pro bono legal clinic within a South West hospital
- Provision of free meeting room space
- Assistance with NHS complaints
- Provision of free training to a range of charities (to include staff and service users)
- Drafting of articles relating to legal issues within charity publications

- The services of a case manager to oversee the various therapies and to keep Sarah's care needs under regular review;
- Carer support on holidays etc.; and
- Access to specialist activities and opportunities for interactions with her peers.

In both the Court of Protection and clinical negligence cases, Sarah was entitled to and received legal aid funding.

AREAS FOR DISCUSSION

1. How do the organisations you work within cross work with the private or charity sectors?
2. What are the challenges of collaborations between the private and charity sectors?
3. How could our organisations overcome some of these challenges and create new opportunities for cross working?
4. What are the areas of best practice that we can all learn from?