

## WHITEHEADS CASE REPORT

### Possession success despite serious mental health issues

#### Background

In June 2007, a client of Whiteheads instructed us to apply for a 'without-notice' Anti-Social Behaviour Injunction (ASBI) against an elderly lady, D, a resident at a Sheltered Housing Scheme on the Wirral, after she had engaged in violent and threatening behaviour towards neighbours.

D had engaged with Social Services (SS) previously and suffered from Epilepsy, however after investigating D's mental health, the Claimant was satisfied that she had full capacity to understand the terms of an Injunction, as well as the consequences of any breach.

Later, however, decisions made by Judges at Birkenhead and Liverpool County Courts led to the matter spiralling into a lengthy, complex and costly process which included:

- 14 Hearings
- D's 12 week incarceration
- Referral to Circuit Judge specialising DDA matters
- Numerous medical assessments
- Involvement of the Official Solicitor
- An instruction for Judicial Review.

## Chronology

Below is a chronology of the key facts in the case:

### 2007

June 2007 – a without notice ASBI was made against the defendant and after the return hearing in July (where she dismissed her Solicitor) she was arrested for assaulting a Scheme Warden. A 14 day suspended committal order was made.

August 2007 – the Defendant engaged in further violence and was arrested and produced – the Judge requested a psychiatric examination while D was remanded at HMP Styal.

September 2007 – a NSP was served on D while on remand during which time she continued to be violent and abusive. Later in the month, a further hearing had to be adjourned as D had forgotten her glasses and epilepsy medication. At this point the Official Solicitor (OS) became involved.

October 2007 - the Defendant was deemed to be a Protected Party (formerly patient) under the Mental Health Act 1983 and further medical assessment was ordered. In the following month, the matter was transferred to a Circuit Judge specialising in DDA issues and a Firm was instructed by the OS to judicially review Social Services (SS) for their lack of intervention in rehousing and support. SS subsequently engaged with D.

Mid-November 2007 – D was diagnosed with Organic Personality Disorder and remanded to hospital for a full report. There was further violent behaviour and the claimant issued possession proceedings and applied to exclude D from the housing scheme.

December 2007 – the Court found that D did have capacity to understand and as D had been relocated, the injunction was not continued. A trial was listed for February 2008.

## **2008**

January 2008 – D tried to terminate her tenancy and even though the court had said that D had capacity, she was still a protected party and the claimant asked the Court to confirm that D had capacity to end her tenancy. At this time the court decided that D did have capacity so the termination was accepted.

February 2008 – at a further hearing, the Judge changed his mind about D's capacity and said that the claimant should not have accepted the termination (despite it having been agreed by Social Services and D's Solicitor). The matter went to Trial. Clearly the claimant disagreed with the Court on the issue of capacity.

Later in the month there were further difficulties in liaising with SS but D was rehoused by another organisation with support from SS. D's Solicitor suggested that a Deed of Surrender be endorsed, however, given the Court's previous reticence, the Claimant wanted the Court to make the decision.

At the final hearing, having been reminded that the Court had decided that D lacked capacity to terminate or abandon the property, the Judge finally made an order for possession as it was satisfied that D's conduct had affected the health and safety of others.

Despite the length of this case and the challenges that the Claimant faced, the result was a success. The Claimant secured findings of fact, we were able to obtain an injunction at an early stage that afforded protection to residents and staff from the outset and ultimately the claimant won possession.

A few things that you may need consider:

- What is disability and is the defendant disabled?
- Does the defendant have capacity?
- Have these been investigated fully?
- Do they need a litigation friend and should the Official Solicitor be involved?
- What can other agencies do to help?

### **Further information**

If you require advice on any cases that have a mental health or disability dimension, please contact Paul Lloyd at Whiteheads in the first instance.

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### **Training**

If you feel your organisation would benefit from training in this area, please contact Neil Whitehead on the above number or at [neil.whitehead@whiteheadsols.co.uk](mailto:neil.whitehead@whiteheadsols.co.uk).