



**5 Stone
Buildings**

Sex and the COP: case update

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A Local Authority v C [2021] EWCOP 25

What were the facts?

39 Care workers: causing or inciting sexual activity

(1) A person (A) commits an offence if—(a) he intentionally causes or incites another person (B) to engage in an activity,

(b) the activity is sexual,

(c) B has a mental disorder,

(d) A knows or could reasonably be expected to know that B has a mental disorder, and

(e) A is involved in B's care in a way that falls within section 42.

(2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

(3) A person guilty of an offence under this section, if the activity caused or incited involved—

(a) penetration of B's anus or vagina,

(b) penetration of B's mouth with a person's penis,

(c) penetration of a person's anus or vagina with a part of B's body or by B with anything else, or

(d) penetration of a person's mouth with B's penis,

is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(4) Unless subsection (3) applies, a person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

42 Care workers: interpretation

(1) For the purposes of sections 38 to 41, a person (A) is involved in the care of another person (B) in a way that falls within this section if any of subsections (2) to (4) applies.

(2) This subsection applies if—

(a) B is accommodated and cared for in a care home, community home, voluntary home [, children's home, or premises in Wales at which a secure accommodation service is provided], and

(b) A has functions to perform [...] in the course of employment [in the home or the premises] which have brought him or are likely to bring him into regular face to face contact with B.

[(3) This subsection applies if B is a patient for whom services are provided—

(a) by a National Health Service body or an independent medical agency;

(b) in an independent hospital; or

(c) in Wales, in an independent clinic,

and A has functions to perform for the body or agency or in the hospital or clinic in the course of employment which have brought A or are likely to bring A into regular face to face contact with B.

(4) This subsection applies if A—

(a) is, whether or not in the course of employment, a provider of care, assistance or services to B in connection with B's mental disorder, and

(b) as such, has had or is likely to have regular face to face contact with B.

...

- **Section 79 (6) SOA 2003: “*mental disorder*”** has the meaning given by section 1 of the Mental Health Act 1983
- **Section 1 (2) of the MHA 1983: “*mental disorder*”** means any disorder or disability of the mind

What arguments did the parties
make?



What was the decision?



Stay tuned...

So, what now for deputies?

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Harriet Hall | @Harri_Grace

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Any questions?





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