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?



2 July, 2021

Sex and the COP: case update

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 <u>sections 38 to 41</u>, 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?

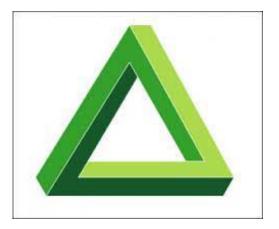






What was the decision?







Stay tuned...



So, what now for deputies?



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(口)

Harriet Hall | @Harri_Grace Wednesday 3 April 2019 16:00 | 60 comments



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Any questions?



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