

IN THE COURT OF PROTECTION

IN THE MATTER OF THE MENTAL CAPACITY ACT 2005

BETWEEN:

ADE

(by his litigation friend, the Official Solicitor)

Applicant

-and-

XCC

First Respondent

-and-

AHNH

Second Respondent

NOTE OF THE JUDGMENT OF THE HONOURABLE MR JUSTICE MOSTYN
SITTING AS A JUDGE OF THE COURT OF PROTECTION
AT THE BIRMINGHAM CIVIL JUSTICE CENTRE ON 30 JUNE 2010

The case in front of the court is an appeal by ADE under section 21A of the Mental Capacity Act 2005 against a standard authorisation made concerning him. There have been a number of standard authorisations in relation to him. The present standard authorisation which is due to expire on 8th July 2010 confines him to the care of AHNH care home.

The first question is how is this appeal to be disposed of. ADE is now represented by the Official Solicitor as litigation friend, who does not support this appeal, as on the evidence the case is hopeless it being common ground that there is a long history of mental ill health coupled with an entrenched set of delusions including the belief that he is a member of both Houses of Parliament.

Having refused that application, I now go on to consider the extent of the powers given to XCC and AHNH under the existing, and any renewed, standard authorisations. The powers of restraint and deprivation of liberty fall under Schedule A1 of the Mental Capacity Act 2005. It is common cause that these powers extend to a power to restrain ADE if he tries to leave the care home. The question is whether within those powers there is a power to coerce ADE to return if he refuses to return to the care home from a period of leave. It is understandably in his interests that ADE should have access to society in the community and

'escape' the confines of the care home. The PCT have agreed to fund befrienders to encourage access to the community.

Do the powers under the existing standard authorisation extend to coercing ADE back to the nursing home if ADE refuses to return? It would be little short of absurd if the local authority and AHNH had powers to restrain him from leaving but not to compel him to return: the greater power must include the lesser. I will therefore declare that this power is implicit in the current and any future standard authorisation.