

Case Study – Vanessa

Background

Vanessa is 55; she has muscular dystrophy which is degenerative and incurable. Vanessa is bed and wheelchair bound, unable to weight bear, and has limited dexterity in her hands. Vanessa says she has continuing pain in almost every part of her body and bearing it makes her feel depressed. Vanessa requires support with all personal care; she is continent, but requires support and a hoist to use the loo, and uses pads when carers are not around.

A 2011 assessment concluded that Vanessa needed 24 hour care (around 185 hours of care per week). In 2014, the council implemented a care package of 104 hours a week. Shortly after that it arranged installation of a hoist, but did not review Vanessa's needs any further. In 2016, the council reassessed Vanessa and reduced her care package to 52 hours of care per week. This was intended to include removal of her night time care; a pressure relieving mattress and incontinence pads would suffice. This reduction never took effect due to an oversight.

Vanessa complained about the planned reduction. The council instigated an assessment of night time care needs (inc turning, incontinence and pressure sores) with which Vanessa cooperated, and a MDT met at Vanessa's home to discuss the results/ agree next steps. In 2017 following risk assessment and revision of the care plan, a trial reduction of Vanessa's package took place for 6 weeks, removing the night time care (the mattress and pads being in place). After the trial, the care plan was formally revised to include 40 hours of support for Vanessa; this includes personal care, meal preparation, shopping and cleaning and support to access the community.

The council states that its assessments clearly record all Vanessa's needs, and includes a table setting out Vanessa's desired outcomes by reference to the wellbeing factors (especially dignity). It also had multi-disciplinary input.

When Vanessa's request to reinstate the package at 104 hours was rejected, she issued proceedings for Judicial Review. Vanessa claimed (broadly):

- The council's assessment and care plan was unlawful. Its claim that her support could be reduced by more than 50% was irrational, given that her condition is degenerative – cogent reasons were required to conclude her needs had reduced when compared with previous assessments
- The council has failed to give proper consideration to the factors within s9(4) and the wellbeing factors in s1(2), and failed to have regard to the need to prevent additional needs arising (due to a deterioration in wellbeing). Further, it had failed to properly assess her needs against the eligibility criteria.

You are a council lawyer engaged in a pre-hearing review of Vanessa's application for JR; consider:

1. In giving judgement, the judge stated that in reviewing the council's decision, the court was not reviewing the merits of its decision, but reviewing it by reference to public law criteria; what are public law criteria?
2. They weren't argued by Vanessa, but what rights under the ECHR must be considered here?
3. What the merits of the council's case? What are its weaknesses?
4. What are the merits of Vanessa's case? What are its weaknesses?
5. On the basis of the evidence presented, how do you rate the council's chances? Why?

Outcome

- The duty to meet assessed eligible needs is absolute; regardless of a council's resources, but it may take into account its resources in assessing [how, rather than whether, to meet need]
- "Where the existence or non-existence of a fact is left to the judgment and discretion of a public body and that fact includes a broad spectrum ranging from the obvious to the debatable to the just conceivable, the

duty of the court to leave the decision of that fact to the public body to whom parliament has entrusted the decision making power save in a case where it is obvious that the public body [...] are acting perversely”

- “Case law warns against over-zealous textual analysis and indicates that a social workers assessment should be constructed in a factual way with a view to finding the real substance of the decision”
- The council has taken into account Vanessa’s need for pain management, and there is no evidence that the pain relates to the provision or otherwise of night time care
- The night time care was previously provided to meet toileting and turning needs, not to provide companionship. Vanessa has been supported to access social support in other ways e.g. her church
- The council involved Vanessa and a multi-disciplinary team in reaching conclusions, trialled the reduced package, and has kept it under close review
- There is little or no evidence that the reduction has had a significant impact on Vanessa’s wellbeing
- Viewing the decision in the round, the council has had regard to all Vanessa’s circumstances – including that her condition is degenerative - and taken into account all her needs and her wellbeing

Vanessa’s perspective

- My needs are at least as great as they were several years ago when I was assessed as needing 24 hour care; the only improvement has been the installation of a hoist which means I don’t need two-carer calls
- The MDT was clearly a service-driven reduction of support rather than a genuine assessment of need
- When I was reassessed, the impact of removing night time care on my wellbeing was not considered
- My all over body pain has increased since removal of the night time care
- Since the reduction in support I have been to see my GP because of my low mood; it’s depressing to be on my own at night and be left in a wet pad
- I am often in pain overnight and I rely on my night time carer to reposition me, change my pads and provide emotional support
- I fear intruders when I am on my own; there are young people nearby who smoke and take drugs
- My advocate suggested that I could just have one carer visit during the night to help with turning and personal care, but the council said that assessments didn’t identify that I need this help

The council’s perspective

- Vanessa goes to church every Sunday between around 8am and 2pm during which time she manages her continence by eating/ drinking frugally; she is able to get through the day with one pad
- It is almost 1 year since the reduction of Vanessa’s package and at no time has she had any pressure sores or wounds; DNs continue to visit twice weekly to monitor
- During the trial period and since, there have been no issues with the reduction of care; if there was, we would reappraise immediately

- Vanessa' pain is being managed by a pressure relieving mattress, a new wheelchair, support from OT and physio (she has been discharged from the latter). On a recent visit to her GP, Vanessa only advised of pain in her foot; she has not reported pain to the DNs
- On a recent visit to her GP, the GP thought no MH referral was necessary
- There is no evidence that Vanessa's night time needs are not being met; for example, Vanessa is able to change position in bed, and the DN has confirmed this
- Vanessa accesses the community in her motorised wheelchair and has support from voluntary groups which arrange activities. Vanessa has been escorted to attend seated exercise classes
- Vanessa's house is secure; she has declined installation of a link line due to costs, but has a phone