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TX: 21.02.03 JUDGE ORDERS LOCAL AUTHORITY TO SCRAP BAN ON MANUAL LIFTING DISABLED PEOPLE

PRESENTER: LIZ BARCLAY

BARCLAY

Hundreds of disabled people are hoping that a high court ruling will help clear up the issue of how and when they are lifted by paid carers. A judge told East Sussex county council this week that it must not operate a ban on lifting disabled people. The local authority had been justifying its ban by using guidelines published by the Royal College of Nursing. Originally those guidelines were aimed at protecting nurses in hospitals. In future councils will be encouraged to follow Health and Safety Executive guidelines. Peter White is here. Peter, remind us about the case that brought this judgement about.

WHITE

Well this is a complicated story about the home care of two severely disabled young women, I still can't name them because of legal reasons. But their carers - their mother and stepfather - have been in dispute with East Sussex social services over a long period of time. Their mother says that during much of the '90s they had a very good package of care from a voluntary organisation but then when care passed directly to the social services department there were a whole range of problems culminating in the refusal to lift them, which the carers then had to take on themselves. They now feel thoroughly vindicated by this judgement.

MOTHER

I'm very pleased with the judgement, I'm very pleased that it will prevent disabled people being left sitting in wheelchairs for hours on end or being left without a bath or without being able to use the toilet because there's no means of hoisting them on to these - or in and out of these things. So yes it remains to be seen whether East Sussex now will allow us to have the service that we need to have based on this more flexible approach.

WHITE

And the youngsters' mother feels that what really went wrong in their case was a negative and unfeeling attitude to the treatment of her daughters.

MOTHER

I've never felt that the girls have been treated really like human beings. They are classed almost as dangerous loads. The health and safety legislation doesn't sort of differentiate between picking up a piece of furniture or a human being. In fact we've been told it's easier to pick up a piece of furniture because it doesn't move. But the fact remains that we're talking about human beings with needs and feelings and wishes who don't always want to be mechanically moved, who need that human touch.

BARCLAY

So what do East Sussex social services say about this judgement then?

WHITE

Well they don't deny this was a complicated case and that relationships between them and the caring couple were very difficult. They claim they suggested 10 different types of care packages to meet the needs which were turned down or broke down but they do acknowledge they were perceived to be operating a blanket no lifting policy and that over the past year they say they've revised their guidelines, in discussion with the Disability Rights Commission. Now I've been talking to David Archibald, who's director of East Sussex social services, this is the first interview he's given since the judgement and I asked him whether it would now be more likely that this couple and disabled people in the same situation would now be able to get manual lifting if they wanted it.

ARCHIBALD

We are always very keen to provide the services that people need and at the same time we have to tackle this difficult balance between the care and human rights demands alongside the health and safety and manual handling regulations. But we have gone out of our way in our new code of practice to stress that it is not a no lifting policy and that lifting will take place as needed.

WHITE

And so can I ask again - is it more likely now that people in this situation will be able to get people to manually lift the people they are caring for, or indeed people who are living alone?

ARCHIBALD

It's perhaps slightly more likely in that we have set out very clearly in our revised guidance that it's not a no lifting policy to make that very clear.

BARCLAY

So Peter how widespread is this problem?

WHITE

I think it's quite a big problem, both in terms of numbers and the issues it raises. After You and Yours first covered this case I heard from many disabled people with stories of the distress and the indignity of not being able to be transferred from chair to chair or chair to bed, even when there was mechanical equipment available sometimes and that it caused them a lot of distress. It places huge restrictions on people's lives. The chair of the Ealing Independent Living Centre reckons that this could affect thousands of people. One of the worst cases we've come across is a lady with multiple sclerosis called Lorraine Wolstenholme, her primary care trust in Milton Keynes have said it's too dangerous for their staff to lift her because of the physical spasms that she has, this even with mechanical lifting equipment and this has been going on for the past eight months and is causing her great distress.

LORRAINE WOLSTENHOLME

It's very humiliating and actually degrading to have to say this to people but I've had to sleep in my wheelchair and obviously that doesn't help a condition like MS, it makes all my symptoms very much worse. I just don't know how I'm going to carry on really. They're telling me it takes what two, three nurses to move me but they expect my daughter to do it single-handedly and she's only very small person, my daughter, she only weighs about 7 stone and she's very shortly going to injure herself.

WHITE

Milton Keynes primary care trust say they did seek independent advice, which confirmed there was risk to manually lifting Mrs. Wolstenholme, a conclusion supported by the courts but they do say that they understand this is a situation that can't go on. And just interestingly the Royal College of Nursing, on whose judgements many of these cases were based, they say they didn't intend these cases to be interpreted and to give credence to a no lifting policy.

BARCLAY

Thank you very much Peter. Fiona Westwood is national officer at the union Unison, with responsibility for home care workers. Fiona it seems that everybody's denying that there's such a thing as a no lifting policy, David Archibald said they were perceived to be operating a blanket no lifting policy. The original guidelines from the Royal College of Nursing used to justify the ban say that each case should be treated on its own merits and an action plan and risk assessment worked out. So have the guidelines, do you think, been interpreted too defensively of nurses and carers?

WESTWOOD

Well I think what I would say about that Liz is that people have interpreted them very vigorously in terms of saying if this isn't in place I will not do x, y or z because that's what their employers have told them to do. Having said that though I think there is room for flexibility and this whole case is about the balancing out of rights and responsibilities of the service user versus the care worker because at the end of the day you cannot afford to ignore health and safety legislation either. And there's a substantial body of evidence which indicates that back pain, back injury and back problems are a significant problem for the workforce. One in three cases is caused by manual handling.

BARCLAY

What do the workers themselves then feel about the decision on Tuesday?

WESTWOOD

Well I think the workers themselves would probably welcome a clear position, if we can ever get to there because there has been a lack of clarity and I think you have to bear in mind as well, at the end of the day, those people are on the frontline of the service, making extremely difficult decisions on a day to day basis with people, not with objects, as was referred to, but with living human people with feelings and dignity issues and all the rest of it. So I think that home care workers will welcome some sort of clarity on that but equally we cannot sanction a position that means people are put at risk and employers are right to seek not to do that.

BARCLAY

Liz Sace also joins us, she's director of policy and communications at the Disability Rights Commission. Liz Sace with the possible consequences of this decision for individual workers, for instance they could get injured, back pain, as we've heard, is a big problem for carers, they could end up having to leave the profession. You have actually welcomed this case decision but it could leave even more disabled people without help and it would be an irony if carers themselves became disabled as a result.

SACE

Well I think the first thing is that as the judge said the right to participate in the life of the community, living independently, is so important that it means that some manual handling is actually necessary. So it's part of the job. The judge said very clearly in the high court decision - manual lifting is part of the job. We can't in society unfortunately reduce risk to absolutely nil, if we did we'd never look at a computer screen, we'd never get in a car, train drivers would never drive their trains etc. So the key point is how do we ensure that disabled people do have dignity, do lead the lives that they want to lead - they can get up in the morning, they can get a bath and so on - but we do it whilst minimising the risks, we take the right precautions, we have the right training in place. And I think Fiona's absolutely right that we shouldn't be putting staff at any significant risk and the judgement, very helpfully I think, clarifies the law on that point, it's about avoiding, minimising, risk but you can't eliminate it altogether.

BARCLAY

So you're both basically saying exactly the same thing - you have to minimise the risks to the carers but while allowing some dignity for the patients. But will this really make any difference? David Archibald, we heard there, saying it's slightly more likely that people will get help with the lifting that they need. Will it actually make any difference Fiona?

WESTWOOD

I think the difference will be a marginal one, I have to say that, because at the end of the day, the bottom line on lifting and moving and handling is there no safe way to do it. So the whole question is about minimising rather than eliminating any element of risk. Our view is that if equipment is available and there are other measures that are appropriate those are the ones that should be used wherever possible.

BARCLAY

Liz Sace very briefly - will it make a difference?

SACE

I think it'll consign to the scrap heap the notion that was in the original RCN guidance that anyone over two stone twelve pounds can't be lifted even by two female workers. And I think it really puts in place the notion of partnership - it's the service user and the worker deciding together what'll work best and that is safer incidentally as well as better for the disabled person.

BARCLAY

Liz Sace from the Disability Rights Commission and Fiona Westwood from Unison thank you both.