

Case Summary

Re JM & Ors [\[2016\] EWCOP 15 \(Charles J\)](#)

Re VE [\[2016\] EWCOP 16 \(Charles J\)](#)

Issue

Article 5 ECHR – Deprivation of liberty

Facts

These test cases related to a class of cases in which a welfare order was sought by local authorities to authorise P's deprivation of liberty under the *Re X* streamlined procedure. The court considered five cases, JM, AMY, JG, MM and VE, where there was no family member or friend who could act as litigation friend in applications by the local authority to authorise a deprivation of liberty. That was no longer the position in VE and the test cases referred to the remaining four.

Decision

In the cases of JM, AMY, JG and MM, the court decided that the Ministry of Defence and Department of Health should both be joined as parties to the proceedings. The parties were invited to take steps either to identify a suitable person who was ready, willing and able to accept immediate appointment as P's rule 3A representative, or identify a procedure that was available to the COP to meet the minimum procedural requirements in the case. The applications were stayed pending the identification of a practically available procedure that enabled the COP to adopt a procedure that met the minimum procedural requirements. All parties were given liberty to lift the stay and generally.

In the case of VE, a friend of VE's was appointed as her Rule 3A representative. The court took the opportunity to provide an explanation for family members or friends appointed as Rule 3A representatives. The court described the role of a Rule 3A representative as "*someone who knows the position on the ground, to consider whether from the perspective of P's best interests*" to decide whether they agree or disagree that the court should authorise P's package of care and support.

Practice implications

These two cases provide practical guidance as to the procedure to be followed in applications made under the *Re X* streamlined procedure. The clear message to public authorities is to continue making applications where an individual is being deprived of their liberty in circumstances requiring authorisation from the court, even when there is no family member or friend who can act as P's rule 3A representative. The court acknowledged that this was likely to cause a backlog comprising a very large number of stayed cases. Whilst this was unfortunate, it would identify the extent of the problem and why the COP and applicant authorities have not been able to progress applications for welfare orders to authorise P's deprivation of liberty.

In cases where there is a family member or friend who can act as a rule 3A representative, the court's explanatory note can be provided to assist their understanding of the role. The note provides useful guidance in simple terms explaining the role of a rule 3A representative, the court documentation, the steps the rule 3A representative should take, the requirement to ascertain P's wishes and feelings and to determine what is in P's best interests. It also gives guidance on making a witness statement, and suggests that the rule 3A representative may wish to seek legal advice and/or more information from the local authority

The full version of these case reports can be found [here](#) and [here](#). Further reports, articles and guidance notes can be found on our dedicated Mental Capacity Law Resources Page by [clicking here](#).