

Aged Care and Liberty Deprivation

Kate Diesfeld

‘A gilded cage is still a cage’.

P v Cheshire West and Chester Council
[2014] UKSC 19, [46]

Introduction

Lady Hale’s observation in the above judgment from England is an evocative reminder that benevolent care within a coercive environment, no matter how well intentioned, still constitutes a deprivation of liberty. Her Honour’s perspective is relevant to many people in aged care facilities whose freedom is restricted. This chapter will reflect upon residents’ legal status and potential safeguards, in light of this quotation from *P v Cheshire West and Chester Council*¹ (*Cheshire West*). The decision had swift and far-reaching impacts, both for people who are subject to residential restrictions and for service providers. Although it was decided by the United Kingdom Supreme Court, the judgment inspires us to critique the legal protections that exist within our own jurisdictions.

For many older people, coercive residential care is traumatic. Yet the decision to place people in aged care settings over their objections, or in the absence of consent, is usually based on benevolent intentions. Occasionally people need protection to prevent harm and this intervention may restrict their freedom to the point of depriving them of their liberty.

Thus, a tension emerges. How can older people’s welfare be promoted while still respecting their preferences to the greatest extent possible? This is a live issue in many jurisdictions, particularly given the rapid, substantial growth in the number of people who are aged 65 and over who are entering residential facilities. A groundswell of concern about their status is evident within international scholarship, policies and legislation.

Changing demographic patterns and social arrangements have resulted in increased aged care admissions. In tandem, the rights of older people and disabled people are gaining greater prominence. This analysis reflects upon the legal issues, proposed reforms and alternatives. The reference points are the United Kingdom, Australia and New Zealand. But the dilemma exists across jurisdictions, impairment groups and our lifespans.

¹ [2014] UKSC 19, [46].

This is a preview. Not all pages are shown.