Vulnerable Adults Bill proposal

The problem

There is a significant cohort of individuals who (1) do not lack capacity for purposes of the Mental Capacity Act 2005 (‘MCA 2005’); (2) are in some way vulnerable to coercion or duress on the part of third parties; and (3) outside the scope of domestic violence legislation. Most, but not all, of these individuals have cognitive or other impairments of different kinds, such as learning disability, autism or Alzheimer’s. There are statutory duties upon local authorities in both England and Wales to inquire into the situation of such individuals. However, in both jurisdictions, with some variations, (1) at present it is unclear what steps can be taken to secure the protection of such vulnerable individuals; (2) such steps as can be taken are frequently expensive and cumbersome; and (3) do not cover all situations. There is therefore a significant gap in the protections available for these individuals.

The solution

A proposal was submitted to the Law Commission for a project on a Vulnerable Adults Bill as part of its 13th programme of Law Reform. Such a project would give the opportunity to:

1. Clarify the scope of those to whom protection should be afforded, having regard to the relevance of disability and the provisions of the Convention on the Rights of Persons with Disabilities;
2. Clarify the basis of and the rationale for intervention in the affairs of those considered vulnerable, again by reference (where relevant) to the Convention on the Rights of Persons with Disabilities;
3. Establish principles for such intervention akin to those set down in the MCA 2005;
4. Clarify the dividing line between those considered to lack capacity for purposes of the MCA 2005 and those falling within the definition of vulnerable adults, and provide a statutory basis for jurisdiction to be exercised by the courts over such vulnerable adults;
5. Consolidate and amend the law relating to such matters as:
   a. The powers of the courts to ban suspected perpetrators of abuse from contact with or residence at the place of an adult at risk;
   b. Protection of liability for those involved in protecting vulnerable adults (including by disclosing confidential information where relevant);
   c. Offences committed in relation to vulnerable adults including financial and other abuse, for instance by extending the scope of the offence of coercive and controlling behaviour contained in the Serious Crime Act 2015.

Assistance required

The Law Commission has selected the proposal for further consideration after an initial sift, with a final decision to be taken in May 2017. A key component in this decision will be evidence as to the impact of the problem and the benefit of reform, and we are therefore seeking:

1. Case studies – from professionals, carers, and those identified (by themselves or others) as vulnerable;
2. Support from professional and representative bodies, either for the project in general or for specific aspects.

Contact details

For further inquiries or to lend support, please contact Alex Ruck Keene at alex.ruckkeene@39essex.com.

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1 The term ‘vulnerable adults’ is used here deliberately as this is the term that is used by the High Court when exercising its inherent jurisdiction over individuals in the cohort identified in this briefing. We recognise that the term is not one used in modern legislation such as the Care Act 2014/Social Services and Well-Being Act 2014 and associated guidance. Part of the project we propose would be to identify the correct term.

2 Case studies from each cohort can be provided upon request.