

Vegans and the Law



Vanessa Clarke talks to Kamal Adatia, Vegan Society member, Barrister and Head of Community Services Law at one of Britain's largest and most diverse city councils. The legal opinions expressed are those of the provider only; they do not constitute legal advice and do not profess to constitute a definitive statement of the law as it stands in England and Wales.

BACKGROUND

In the Autumn 2006 issue of *The Vegan* we heralded the passage of the Equality Act with the words: "The European Community has proclaimed that those with deeply held beliefs such as veganism are as much entitled to respect and equality of treatment as any other group – and quite right too, since for many of us our vegan diet and lifestyle is more important than the culture or religion we happen to have been born into because it is a moral choice we have made for ourselves."

Last year's Catering for Diversity event brought together professionals responsible for implementing the equality legislation in hospitals, care homes and other public services and was much strengthened by the advice provided by Kamal Adatia. Since then, we have continued to negotiate at both local and national level to ensure implementation of the Act in regard to vegans. We are currently seeking to ensure that veganism is included in every local authority's "diversity statement". We are also working with colleagues in Europe to promote implementation throughout the European Union and in the EU institutions in Brussels (where a recent British employee apparently found nursery providers unable or unwilling to provide animal-free food for his child).

This will require maximum support from members, local contacts and others, and none more crucial than those with a commitment to diversity and expert knowledge of the law in this area. So we are fortunate indeed to have Kam's knowledge and expertise to guide us. The questions that follow are just a few of those that have arisen so far and on which he has generously given us the benefit of his wisdom and experience.

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THE EQUALITY ACT

Vanessa: Now that the legislation is in force, can you give us some idea how it applies to vegans?

Kam: The Equality Act 2006 came into force on 30th April 2007 and one of its purposes was to make discrimination unlawful on the grounds of "religion or belief" in the provision of goods, facilities and services, the disposal and

management of premises, education, and the exercise of public functions. 'Belief' is not well defined in the Act, but it is commonly accepted that in order to be deserving of protection and promotion, a belief must be a 'conviction' which is more than an 'opinion' or an 'idea', it must be 'serious' (i.e. not trivial), 'coherent' and 'cogent' (i.e. compelling, persuasive, potent). Veganism is all of these things. There is also protection under the European Convention on Human Rights (Article 9 Freedom of conscience, thought and religion). These legal provisions raise fascinating questions about the rights of 'believers' to live in a society which respects and upholds their beliefs, and the role of the state in supporting (or at least not undermining) these. As the law develops more clarity will be achieved, and in this issue we merely introduce a few scenarios, and suggestions, to provoke debate.

QUESTION RE DEMENTIA AND LIVING WILLS

Vanessa: In respect of vegans who are seriously ill or dying, is it possible to make a 'living will' in advance saying that one doesn't want to be fed and/or administered animal products or substances even if mentally incapacitated and knowing no different?

Kam: The Mental Capacity Act 2005 (sections 24 to 26) and the associated Code of Practice (Chapter 9) (both easily download-able on line) cover the issue. These are called Advance Directives. They operate as an instruction given *before* someone loses mental capacity to refuse specified treatment *after* they are incapacitated. By conferring upon the Advance Directive the force of law they basically protect the fundamental rights

of the patient by respecting their wishes not to receive specified treatment(s), whilst protecting the *medical professional* from a charge of assault/manslaughter or of breaching their ethics by failing to treat in orthodox ways.

The Courts have not tested the theory as to whether the powers go beyond refusing treatment to specifying the *type* of treatment that a patient wants. It may be that the latter is unlikely to be endorsed by the Courts. However, by expressing the directive in such a way as to refuse all treatment *except* that administered in a particular way, this problem might be avoided. Whilst the hospital might not be compelled to source and administer pro-vegan treatments (assuming they were not easily available) it is unlikely that where a valid Advance Directive is in force they could override the refusal to accept administration of non-vegan products, even to save and sustain life.

Even if a person loses capacity before being able to make a valid directive, section 4 of the Mental Capacity Act 2005 is very clear that in making a “best interests” decision regarding treatment, a medic *must* take into account, amongst other factors the patient’s past, present or future expressed wishes, their beliefs and values, as well as consulting their carers.

QUESTION RE VITAMIN K ADMINISTRATION TO NEWBORNS

Vanessa: Until two years ago, vitamin K prophylaxis for newborns was not problematic on dietary grounds since it was entirely vegan. Then the manufacturer suddenly substituted cow bile for one of the ingredients (not the vitamin K itself – the medically necessary part – but just one of the adjuvants). This was not highlighted to professionals or anyone else, with the result that the great majority of Hindu babies – not to mention vegetarians, vegans and all the rest – will have been given an injection containing beef before they even taste their mothers’ milk.

Now for the ‘The Midwife’s Dilemma’: does s/he give the baby the injection without telling the parents what’s in it, thus protecting the child from haemorrhagic disease of the newborn (a rare but serious condition which can cause lifelong brain damage) or does s/he take all the stuff about informed choice seriously, tell the parents and risk them refusing the injection on the

child’s behalf? In other words, the midwife has to choose – for no good reason – between disrespecting the mother and endangering the child. To bring a test case would seem irresponsible in that it could lead to widespread refusal of medication and great damage to patients – hence the ongoing campaign to get things changed voluntarily.

Kam: My only observations would be that:

- consent in law insulates medics from what would otherwise constitute an assault (criminal) and a trespass to the person (civil)
- medics need informed consent for everything except life-saving medical intervention
- for babies, only parents (and exceptionally the Courts) can furnish consent in law
- consent needs to be informed

Vit K injection would arguably not constitute life saving medical treatment (there is no need to save in this context, merely to protect from a statistically small risk of a potentially catastrophic event – see parallel to the MMR and single vaccines).

In your scenario, I would suggest that midwives/doctors are acting unlawfully. Whilst one cannot infer a duty on medics to inform parents about the chemical make-up of every medicine administered to a patient, I would argue that in well known cases of controversial treatments such as this one, the duty on medics is higher. Of course, the only foolproof solution is for parents to be proactive and raise the issue first.

QUESTION RE GUARDIANSHIP

Vanessa: This arises out of a recent case where the children were not brought up vegan despite the parents’ wishes (which had not been stated in any legal document). How can the future of vegan children be safeguarded in the event of an accident befalling both parents?

Kam: Under the provisions of section 5 of the Children Act 1989, a Guardian is a person appointed for a child by the child’s parent or parents, or by the Court, in the event of the death of one or both parents. When effective, the appointment vests in the Guardian

parental responsibility (PR) for the child in the place of the deceased parent(s). Appointment merely has to be (i) in writing (ii) signed and (iii) dated.

The beauty of this simple and comprehensive scheme, for your question, is also its downfall: it is simple and comprehensive. To use the common parlance, “it does what it says on the tin”. The Guardian becomes the holder of parental responsibility. Nobody can therefore gainsay the decisions of the Guardian once their appointment takes effect (i.e. on the death of the parent/s), meaning that no conditions or qualifications can attach to the appointment, (not even through a valid living will or Advance Directive).

This is not to say that such decisions cannot be overthrown. A Court application can be made for termination of appointment (and replacement by a more suitable Guardian), and thereby the Court would have to grapple with a case on the merits of the vegan issue. In doing so, the Court would be obliged to consider, as the paramount guiding principle, the ‘welfare of the child’ and it is here that the Court may be influenced to pay heed to the way in which the child was raised before becoming orphaned. Equally, however, the Court would be just as keen to be pragmatic and not limit the options for appointment of a Guardian where an otherwise willing Guardian was not prepared to raise the child as a vegan. The older the child, of course, the more likely the Court is to regard compliance with a child’s preference for remaining vegan as being consistent with the child’s ultimate ‘welfare’.

[Where the provisions of section 5 operate to appoint a Guardian in the event of the death of one parent only (leaving another parent alive, albeit one who does not have full-time care) then this parent shares parental responsibility with the Guardian and can take action through a range of legal measures to assert a view in relation to matters concerned with upbringing. These may involve a Court application for a Residence Order, a Prohibited Steps Order or a Specific Issue Order.]

The only advice I can proffer, therefore, is to choose your Guardian carefully. If you choose wisely, then the act of conferring parental responsibility upon them through guardianship will indeed be extremely powerful and will avoid drifting through childhood (until age 18) in a state of legal and moral limbo.