

# Diana godchild ruling lets parents act for disabled

**Greg Hurst** Social Affairs Editor

Parents with disabled children should have a greater chance of winning the right to act on their behalf once they reach adulthood because of a court case fought by a close friend of Diana, Princess of Wales.

Rosa Monckton, a charity campaigner whose elder daughter Domenica, 24, has Down's syndrome and a learning disability, is among a group of parents who have challenged the laws that protect people who lack mental capacity.

Under the Mental Capacity Act 2005 parents can take decisions on behalf of their children if they cannot do so for themselves until they reach 18, but thereafter decisions on their future must be taken collectively by social workers, carers, health professionals and anyone with an interest in their welfare. Parents may apply to the Court of Protection, which takes decisions on the welfare and finances of people who lack mental capacity, to have themselves, a sibling or another person appointed a personal welfare deputy to perform this role, but the act's code of practice says this should only be for "the most difficult cases".

Ms Monckton, 65, her husband Dominic Lawson, a journalist and commentator, their younger daughter, and two other families challenged the law in the Court of Protection in March, saying that it meant parents, who knew

their children best, could be overruled once they were young adults. Now the judge has called for a change to guidance on applying the law and said parents should have more opportunity to represent their adult children.

Mr Justice Hayden did not accept that the law was contradictory but said it should be "emphasised unambiguously" that there should be no presumption against the appointment of a deputy. He also said that a section of the code saying these were required only in



**Rosa Monckton was campaigning for her daughter Domenica, 24**

the most difficult cases should be "revisited". His judgment is binding, so the Ministry of Justice, which reviewed the code of practice this year, must act on it. The families, who have applied to be made deputies for their children, will amend their requests to reflect the judge's comments and said the ruling should improve the prospects for similar requests by others.

Ms Monckton said: "There is still a lot of work to be done but today's ruling is welcome. We hope this judgment will ensure parents, who of course will in most cases have an intimate knowledge

of their children and what is in their best interests, are routinely involved in shaping the future of their children."

Domenica, the late princess's goddaughter, recently started work in a café at the Pavilion Gardens in Brighton and received her first pay cheque this week, which she will spend on make-up and going out with her sister.

The other applicants were Simon Mottram, 53, co-founder of the cycling sportswear brand Rapha, and his wife Lucy, from north London, whose eldest son Oscar, 24, is autistic and has severe learning difficulties, and Caroline Hopton, 56, from Windsor, whose younger son Oliver, 20, has severe autism.

Ms Hopton said: "All we want is for decisions to be taken by people who know them best, taking into account their needs and providing the necessary support. Each case should be looked at on its own facts but in my experience in most cases the best people to make decisions are that young adult's family, not paid care workers. We hope that the judgment encourages more families to apply to become welfare deputies."

Alex Rook, a partner at the law firm Irwin Mitchell, who represented the families, said: "Our experience and that of our clients is that in many cases it would indeed be in the young adult's best interests for their family to be able to continue to make decisions... where they are unable to make the decision themselves."

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