

IMPORTANT NEWS IN CONNECTION WITH THE CANDLELIT VIGIL ON SUNDAY 17 AUGUST

The general manager of Botton Mr. David Knowles had raised issues with regards to the attendance of villagers at the Vigil on Sunday night. The letter sent to Co-workers and copied to Action for Botton is quoted at the bottom of this page. The demands made in that letter were so extreme, bearing in mind that the vigil is no more than a service with candles starting at Danby Church, that both Action for Botton and Bindmans solicitors wrote to North Yorkshire County Council (NYCC). I am pleased to report that an NYCC lawyer has now contacted Bindmans and made it clear that, contrary to the claims of CVT, there are no problems in anyone attending the service and no capacity assessments are necessary. The legal advice below can guide any uncertain as to the position.

Neil Davidson, Chairman, Action for Botton

The Statement from Anna Moore, Solicitor at Bindmans LLP, prepared to reassure all wanting to attend the Vigil, reads:

"I have been asked to clarify the position about the rights of Botton Village residents to speak to the press and to attend a vigil on Sunday 17 August 2014 in relation to concerns about the changes to Botton Village that have been proposed by CVT. I would firstly like to confirm to the villagers directly that you should not be worried about making any decision you feel able to. I know this may be a confusing time but you should not worry about you or anyone else getting into trouble if you decide to attend the vigil or speak to the press. If you feel you need support to make a decision you can ask your co-worker or anyone else you would like to help you.

Unfortunately my clients and their family members believe that CVT is trying to limit their ability to participate in a vigil, planned to go ahead on Sunday 17 August 2014, by not allowing it to take place in Botton Village and by disallowing co-workers from supporting the villagers to attend the vigil if they would like to. Co-workers have been banned from promoting the vigil and other similar events.

*Yesterday, North Yorkshire County Council stated that if the press wanted to speak to villagers about the proposed changes at Botton village that this would need to be 'sanctioned' by North Yorkshire County Council. I think this is a deeply concerning restriction on the villager's freedom of expression. The Mental Capacity Act (MCA) states that a person **must be assumed to have capacity** unless it has been established that he or she lacks capacity (s1(2)MCA). Here, it seems to me that the Local Authority and CVT are starting with the assumption that all the villagers lack the capacity to speak to the press, otherwise why does the press have to seek permission to speak to anyone? Capacity is a person specific and issue specific test. In my view both CVT and the Local Authority have failed to appreciate this.*

Sadly my clients believe that this is a crude attempt to prevent them from speaking out about their concerns regarding the changes proposed by CVT. That the Local Authority is also advocating this position was all the more concerning.

*Of course if there is a valid concern that a villager lacks the capacity to make any decision including to attend a vigil or speak to the press, this must be **properly** assessed, in a proper consultation with certain individuals involved in the person's life. These people will include anyone previous named by the person as someone to be consulted on either the decision in question or on similar issues, anyone engaged in caring for the person, close relatives, friends or anyone else who takes an interest in the person's welfare (Chp 5 MCA Code of Practice). The Mental Capacity Act confirms that before a person is deemed to lack capacity to make a decision **all practicable steps to help him or her make the decision must be taken** (s1(3) MCA). It **does not follow** that an assessment will always be required before a person can speak to the press and/or attend a vigil."*

*Later in the day Anna Moore was able to add "**I am now very pleased to announce that NYCC confirmed this evening that there should be no difficulty in anyone attending the vigil who wants to and no one should be prevented from doing so.**"*

In his letter to the Co-workers in Botton (and copied to Action For Botton), David Knowles, General Manager of Botton appointed by the CVT, wrote on 12 August 2014 "that some of you are organising, or at least have some involvement in the plans for a candlelit vigil on the evening of Sunday 17th August. I believe the last time this happened in Botton was during the suspension of a co-worker couple following safeguarding disclosures. It was inappropriate then and it is inappropriate now. Therefore permission is not being given for the vigil to take place within Botton Village.

North Yorkshire County Council and the charity have a legal duty of care for the vulnerable adults supported at Botton. The involvement of people we support in the recent public meeting has caused North Yorkshire County Council, along with other individuals to express significant concern to the charity. As a result we are now required as the provider to ensure that their participation in such future events and activities does not take place without a suitable capacity assessment.

Co-workers who have declared they are not willing to co-operate with the charity are no longer perceived to be sufficiently impartial to carry out such a capacity assessment on behalf of the charity.

All those working in Botton should not take any steps to share or promote such events and activities like this proposed vigil. Should anyone we support nonetheless express an interest in the vigil or any other similar events and activities in the future then I (or in my absence the Registered Manager) should be informed immediately and appropriate arrangements will be made for capacity to be assessed."