

ALEXANDER RUCK KEENE

Year called 2002

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“He’s like the father of the Court of Protection – he writes the rules, he’s on every committee and he lectures on it. A real academic star – if you’ve got a complicated case, he’s the person you would go to.”

Chambers & Partners 2017

Alex Ruck Keene is an experienced barrister, writer and educator. His practice is focused on mental capacity law (broadly defined) in which he is able to provide specialist advice and representation, as well as delivering expert training for front line professionals. He also writes extensively in the field, editing and contributing to leading textbooks and (amongst many other publications) the 39 Essex Chambers Mental Capacity Law Report, the ‘bible’ for solicitors (and others) working in the area. He is the creator of the website <http://www.mentalcapacitylawandpolicy.org.uk/>, providing resources and expert commentary on some of the most difficult mental capacity issues.

Alex is an Honorary Research Lecturer at the University of Manchester, a Wellcome Research Fellow and Visiting Lecturer at King’s College London and a Research Affiliate at the Essex Autonomy Project, University of Essex. He spent 2016 on secondment to the Law Commission as a consultant to their Mental Capacity and Deprivation of Liberty Project.

PRACTICE AREAS

- Mental Capacity

PRACTICE AREAS

BARRISTERS · ARBITRATORS · MEDIATORS

MENTAL CAPACITY

Alex has been recognised for several years as one of the leading experts in the Mental Capacity Act 2005, being singled out as one of only two 'star juniors' in the Court of Protection: Health & Welfare category in Chambers 2016 and again as a 'star junior' in Chambers 2017, in which he was also described both as the "king" and the "father" of the Court of Protection. He is ranked as one of only three tier 1 juniors for Community Care and Court of Protection in the Legal 500 2017. He is instructed in cases involving the Act by individuals, NHS bodies, local authorities and the Official Solicitor (both on behalf of subjects of proceedings and in his own right), as well as by foreign governments. He is one of the very few practitioners who has experience of appearing / advising upon all aspects of the Court of Protection's jurisdiction (i.e. health and welfare and property and affairs, as well as its international jurisdiction).

Recent endorsements in the legal directories include: "*He's like the father of the Court of Protection – he writes the rules, he's on every committee and he lectures on it. A real academic star – if you've got a complicated case, he's the person you would go to.*" "*He's basically creating jurisprudence on his own, merging his forensic skills, his academic skills and his knowledge to develop the whole area of law.*" Chambers & Partners 2017 "*An encyclopaedic knowledge of the subject area.*" "*An extremely industrious barrister.*" (Chambers & Partners 2017, Administrative & Public) "*He is basically creating jurisprudence on his own, merging his forensic skills, his academic skills and his knowledge to develop the whole area of law*" (Chambers & Partners 2017, Court of Protection: Health & Welfare); "*Top-notch for Court of Protection work*" (Legal 500 2016).

Alex's important instructions in the health and welfare field include: (1) *N v ACCG* [2017] UKSC 22 [2017] 2 WLR 1011, in which the Supreme Court definitively determined the interaction between the Court of Protection and the Administrative Court; (2) *Aintree University Hospitals NHS Trust v James* [2013] UKSC 67 [2013] 3 WLR 1299, the first case in which the Supreme Court considered the MCA 2005, in the context of delivery of treatment at the end of life; (3) *R (LF) v HM Senior Coroner for Inner South London* [2017] EWCA Civ 31, concerning deprivation of liberty in the intensive care setting; and (4) *Birmingham City Council v D* [2017] EWCA Civ 1695, on the meaning of deprivation of liberty for 16 and 17 year olds with impaired capacity).

Alex's expertise in the international jurisdiction of the Court of Protection is unrivalled. He has appeared in the majority of the reported cases, including *Re MN* [2010] EWHC 1926 (Fam) [2010] COPLR Con Vol 893, the first case to consider Schedule 3 to the Mental Capacity Act 2005; *Re O* [2013] EWHC 3932 (COP) [2014] Fam 197, concerning the definition of 'habitual residence' and the doctrine of *forum non conveniens* for purposes of Schedule 3; and *HSE of Ireland v PA & Ors* [2015] EWCOP 38 [2016] Fam 47, the definitive examination of the procedures for recognition and enforcement of foreign protective measures. His instructions include cross-border cases with foreign elements ranging from Thailand to St Helena (where he is was admitted to the Bar for purposes of arguing a novel cross-border case before the Supreme Court there). For the academic year 2013-4, he was a Visiting Fellow of the Institute of Advanced Legal Studies, during which he worked on *The International Protection of Adults* (OUP, 2015), the first book to examine the cross-border protection of the property and persons of adults with impaired capacity. He also co-wrote the new Part 24 of the Court of Protection (Amendment) Rules 2017 setting out the first structure for cross-border cases before the Court of Protection.

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The majority of Alex's instructions in cases concerning P's property and affairs are advisory and/or do not lead to reported judgments. Exceptions include *SBC v PBA and Others* [2011] EWHC 2580 (Fam) [2011] COPLR Con Vol 1095, in which the Court considered again the statutory test for the appointment of both property and affairs and health and welfare deputies and gave guidance as to the status of the Code of Practice. Alex is a Member of the Society of Trust and Estate Practitioners.

Alex writes extensively on the MCA 2005. In addition to the cross-border book noted above, he edited and co-wrote the *Court of Protection Handbook* (2nd edition, Legal Action Group 2017); is the editor of the fourth edition of the BMA/Law Society *Guide to the Assessment of Mental Capacity* (BMA/Law Society, 2015); and also writes/has written chapters in Jordan's annual *Court of Protection Practice* textbook and the third edition of *Mental Capacity Act Law and Practice* (Jordans, 2015). He is co-editor, together with Victoria Butler-Cole, of the authoritative *Court of Protection Law Reports* series published by Jordans. Together with Victoria Butler-Cole, Neil Allen, Annabel Lee, Katie Scott, Nicola Kohn and Simon Edwards he produces the monthly 39 Essex Chambers *Mental Capacity Reports* that are widely acknowledged as one of the most authoritative sources for cases determined before the Court of Protection, being described as a "bible" for solicitors in the field in *Chambers & Partners* 2013.

Alex has also prepared two guidance documents for the Department of Health on matters related to the Mental Capacity Act: "*Acting as a Litigation Friend in the Court of Protection*" (2014) (sole author); "*Deprivation of Liberty: a Practical Guide*" (Law Society, 2015, editor and co-author).

Alex has a keen interest in improving understanding of the MCA 2005 and improving the workings of the Court of Protection. He lectures widely on the Act and trains judges, social workers, doctors, nurses and other professionals who have cause to work with it. He has sat on both ad hoc committees established to review the Court of Protection Rules 2007, and is also a member of the International Family Law Committee, with a specific brief to raise the profile of cross-border capacity issues.

Alex sits – uniquely – on both the Mental Health and Disability Committee of the Law Society of England and Wales and on the Mental Health and Disability Sub-Committee of the Law Society of Scotland. He is also on the Mental Capacity Sub-Committee of the Mental Health Lawyers Association.

Alex was appointed an Honorary Research Lecturer at the University of Manchester in 2014 in recognition of his work in the mental capacity field. For the period 2017 to 2022 he is a Wellcome Research Fellow at Kings College London, working on a major international multi-disciplinary project entitled "Mental Health and Justice;" as a Visiting Lecturer he also teaches a course there on Mental Health Law: the Civil Aspects, as part of the Mental Health, Ethics and Law MSc offered there.

Alex's expertise in the field of mental capacity law has been recognised by Parliamentary bodies in England and further afield: In November 2013, Alex gave oral evidence to House of Lords Select Committee considering the operation of the MCA 2005 as part of a panel of legal experts addressing the functioning of the MCA 2005 and the Court of Protection. He also gave evidence to the ad hoc Committee of the Northern Ireland Assembly convened to consider the Mental Capacity Bill there introduced in 2015.

Alex spent 2016 on secondment to the Law Commission as a consultant to their Mental Capacity and Deprivation of Liberty Project, which reported in March 2017.

MENTAL HEALTH

Alex's significant instructions in the mental health field include: (1) *Sessay v (1) South London & Maudsley NHS (2) Met Police* [2012] 2 WLR 1071, in which the Divisional Court had to consider for the first time the powers under which incapacitated patients can be required to remain upon hospital premises pending their admission under the MHA 1983; (2) *TTM (By His Litigation Friend TM) (Claimant) v (1) Hackney London Borough Council (3) East London NHS Foundation Trust (Defendants) & Secretary of State for Health (Interested Party)* [2011] 1 WLR 2873, where the Court of Appeal determined authoritatively the scope of Articles 5(1) and 5(5) ECHR in the context of admission for treatment under the MHA 1983; (3) *K v G and another* [2009] All ER (D) 128 (Oct), the first successful appeal (as far as Counsel were aware) by a local authority against a refusal to grant displacement of a nearest relative; (4) *M v East London NHS Foundation Trust* (CO/1065/2009), a habeas corpus application arising out of the detention of a patient under s.3 MHA 1983 in circumstances where there was debate as to whether the nearest relative had objected, and in which Burton J gave guidance for the first time as to the meaning of the test in s.11(4)(a) of the 1983 Act; and (5) *R (DB) v Nottinghamshire Healthcare NHS Trust* [2008] EWCA Civ 1354, a successful challenge in the Court of Appeal to the power of a hospital to detain under s.37 MHA 1983 where the detention did not take place within the 28 day period provided for in the hospital order. He acted (pro bono) as second junior to Nigel Pleming QC and Fenella Morris on behalf of the Claimant in the application *Munjaz v United Kingdom* before the European Court of Human Rights (17 July 2012), in which the Court gave guidance both as to the operation of Articles 5 and 8 ECHR in the context of detained patients facing seclusion.

As a result of his expertise in the international jurisdiction of the Court of Protection, Alex was instructed in a series of unprecedented cases relating to the placement of foreign minors in English psychiatric institutions and/or other residential settings under the provisions of Council Regulation 2201/2003. The cases resulted in an urgent reference (from the 'placing' EU member state) to the CJEU, and one public judgment: *HSE Ireland v SF* [2012] EWHC 1640 (Fam); [2012] 2 FLR 1131.

HEALTH

Alex has had a long standing interest in healthcare matters, especially those raising ethical dilemmas. He is instructed by the Claimant in *R (Conway) v Secretary of State for Justice*, challenging the ban on assisted dying in s.2(1) Suicide Act 1961. He is on the Legal and Ethical Policy Unit of the Faculty of Intensive Care Medicine/Intensive Care Society and the Jehovah's Witness working party of the Association of Anaesthetists of Great Britain and Ireland (having previously been on their consent working party). He appeared pro bono in the Court of Appeal (with Jenni Richards QC) for Patient Concern in the leading case of *Burke v General Medical Council* [2006] QB 273.

RECOMMENDATIONS

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Alex has been recommended as “Band 1” practitioner by Chambers & Partners in the Court of Protection: Health & Welfare since the category was introduced in 2011. He was listed as one of only two ‘star juniors’ in the area in Chambers & Partners 2016, and one of 3 tier 1 juniors in the new community care and Court of Protection area in the Legal 500 2017.

APPOINTMENTS

Visiting Fellow at the Institute of Advanced Legal Studies for academic year 2013-4
Honorary Research Lecturer in the Institute of Advanced Legal Studies in the School of Law at the University of Manchester: 2014
Mental Health and Disability Committee, Law Society of England and Wales: 2014
Mental Health and Disability Sub-Committee, Law Society of Scotland: 2015
Wellcome Research Fellow, King’s College London: 2017-2022
Visiting Lecturer, King’s College London: 2017

MEMBERSHIPS

Society of Trust & Estate Practitioners
Mental Health Lawyers Association
Administrative Law Bar Association
European Law Institute

QUALIFICATIONS

Inns of Court School of Law, Bar Vocational Course (Very Competent); Lord Mansfield Scholar, Lincoln’s Inn
College of Law, Postgraduate Diploma in Law (Distinction); Lord Bowen Scholar, Lincoln’s Inn
Johns Hopkins School of Advanced International Studies MA (Hons) International Economics and Strategic Studies
Christ Church, Oxford, BA (Hons) Modern History (First Class)

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