



## Neil Allen

Year of call: 1999

Email: [neil.allen@39essex.com](mailto:neil.allen@39essex.com)

Phone: +44 (0)20 7832 1111

*"An unflappable and incredibly intelligent junior, who has wonderful client empathy." The Legal 500, 2022*

Neil has particular interests in human rights, mental health and incapacity law, and has been involved in many of the leading cases in this field, including *Cheshire West, N v ACCG*, and *Re X*, as well as many reported cases in the lower courts which have shaped the law.

Neil provides specialist advice and representation, as well as expert legal training to frontline health and social care practitioners, which is complemented by his website, [www.lpslaw.co.uk](http://www.lpslaw.co.uk). He regularly publishes his views on the development of the Mental Capacity Act 2005 and the Mental Health Act 1983 in blogs, journals and books. He also teaches undergraduate and postgraduate university students as a senior lecturer at the University of Manchester and provides pro bono services through his [Dementia Law Clinic](#).

## Areas of expertise

Court of Protection - Welfare

Community Care and Mental Health

### Court of Protection - Welfare

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Neil's practice focuses on all welfare issues, ranging from residence, care, contact, sexual relations, and internet use through to related property and affair matters. Owing to the nature of his expertise – specialising in both legal practice and academia – he can bring particular experience to bear on cases involving novel points of law. He is instructed in cases involving the Mental Capacity Act 2005 by the Official Solicitor, local authorities, NHS bodies, individuals and the Public Guardian. His cases typically involve issues relating to:

- Whether P's liberty is restricted or deprived for the purposes of Article 5 of the European Convention on Human Rights (ECHR)
- Whether liberty has been deprived in accordance with procedures prescribed by law
- The interface between the deprivation of liberty under the Mental Capacity Act 2005 and the Mental Health Act 1983
- Procedural and substantive protection afforded by Article 8 ECHR
- Capacity determinations, including issues of executive functioning

- Best interests determinations in relation to various matters including care, residence, and contact
- The validity of lasting powers of attorney
- The appointment of deputies.

#### Cases of note:

- ***Re AC and RC (Capacity: Hoarding: Best Interests)* [2022] EWCOP 39** - The first reported case of its kind to consider capacity in the context of hoarding disorder.
- ***Secretary of State for Justice v A Local Authority & Ors* [2021] EWCA Civ 1527 (3880)** - The leading case concerning the legality of carers facilitating sexual services for P.
- ***Re AA (Court of Protection: Capacity To Consent To Sexual Practices)* [2020] EWCOP 66 (3881)** - This case concerned the approach of the Mental Capacity Act 2005 to a person engaged in autoerotic asphyxiation.
- ***Wakefield Metropolitan District Council & Anor v DN & Anor* [2019] EWHC 2306 (Fam) (3882)** - The limits of the inherent jurisdiction in cases involving the detention of those with capacity.
- ***Re A (Capacity: Social Media and Internet Use: Best Interests)* [2019] EWCOP 2 (3883)** - This case established the test for capacity to use the internet and social media (acted pro bono).
- ***N v A CCG* [2017] UKSC 22 (3884)** - Supreme Court decision regarding best interests and the jurisdiction of the Court of Protection.
- ***Re X* [2014] EWCOP 25 and 37 (3885)** - Guidance from the Upper Tribunal on the approach to be taken where a patient lacks capacity to challenge their detention under the Mental Health Act 1983.
- ***P v Cheshire West and Chester Council* [2014] UKSC 19 (3886)** - The meaning of "deprivation of liberty" for the purposes of Article 5 ECHR.

#### Recommendations

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- As a band 1 junior, Neil is ranked with only 11 practitioners across the country in the Court of Protection: Health and Welfare category in Chambers and Partners (2022) and in band 2 in The Legal 500 (2022).
- *"An unflappable and incredibly intelligent junior, who has wonderful client empathy."* The Legal 500 2022
- *"He is especially talented in Court of Protection cases concerning mental health. He brings an interesting perspective to cases and pitches at the right level."* Chambers and Partners 2022
- *"Always well prepared, a pleasant opponent and a good problem solver." "He thinks outside of the box and puts himself into P's shoes when he is providing advice and will fight to the death to ensure P's rights are restricted the least amount possible." "Very flexible, and the work that he does is of a very high quality. His knowledge base is excellent."* Chambers and Partners 2021
- *"Neil's knowledge of the whole span of mental health, community care and public law is comprehensive. He applies that knowledge with great judgement and one never doubts his analysis. He is excellent on the papers, as he is on his feet."* The Legal 500 2021
- *"He's very academically on the ball, knows the law very well and is a very good advocate." "He is incredibly helpful, very responsive, fantastically knowledgeable and hugely respected in the Court of Protection world."* Chambers and Partners 2020
- *"Incredible intellectual abilities; not in the least phased at the prospect of having to appear before the senior courts on complex matters, at short notice."* The Legal 500 2020

- *"He brings a really great and broad perspective to cases thanks to his academic background. He has an excellent technical understanding of the Mental Capacity Act and community care law, and he is very good at dealing with both lay and professional clients."* Chambers and Partners 2019
- *"Has an encyclopaedic knowledge of all things CoP, but also very likeable and pragmatic."* The Legal 500 2018
- *"Excels at Court of Protection work that involves deprivation of liberty and other human rights issues. Peers point out his academic excellence as a distinguishing characteristic, citing his role as lecturer in Clinical Legal Education at the University of Manchester. His academic excellence in this field is a real strength, and he's brilliant." His ability to quickly identify those issues which may cause difficulties makes him a very helpful advocate."* *"The level of his ability is beyond his years of call."* Chambers and Partners 2017
- *"Intelligent and thorough, he offers an academic but accessible rights-based approach to complex welfare cases. He's an excellent communicator. An excellent communicator and reliable source of support and expertise for the firm and clients alike. He's always willing to delve deeper into broader issues and readily offers insight into exceptionally complex issues"* Chambers and Partners 2016
- *"Intelligent and thorough, he offers an academic but accessible rights-based approach to complex welfare cases. He's an excellent communicator. Very academic and extremely learned on the history of the law and its development. He is also fantastically approachable."* Chambers and Partners 2015
- *"He is highly respected by the Official Solicitor. He has a thoughtful, analytical approach to cases and an amazing eye for detail. What he doesn't know about deprivation of liberty isn't worth knowing."* Chambers and Partners 2014

## Memberships

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- University of Manchester's Centre for Social Ethics and Policy
- Liberty

## Qualifications

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### Education

- 1998-1999 / The Inns of Court School of Law, London/Bar Vocational Course
- 1995-1998 / The University of Manchester/LL.B English Law (Hons)

### Scholarships and prizes

- Manchester Law Society Special Recognition Award Winner (2021)
- The 'LawWorks and Attorney General' Award Highly Commended (2021)
- Times Higher Education Award Nominee for the University of Manchester (2021)
- LawWorks Pro Bono Award Finalist (2020)
- Higher Education Academy CATE Award Nominee for the University of Manchester (2019)
- LawWorks & Attorney General Award Finalist (2019)
- Oxford University Press Law Teacher of the Year finalist (2019)
- Winner of the University of Manchester's Making a Difference Award for Inspiring Communities (2017)

## Additional information

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## Law Books

- Chapter 9 *'The tests for incapacity'* and chapter 10 *'Care and treatment of those lacking decision-making capacity'* in Jean McHale and Judith Laing (eds), *Principles of Medical Law* (4th ed.) (2017), Oxford University Press.
- *'Psychiatric care and criminal prosecution'* in *Medicine, Crime and Society* (2013) Cambridge University Press.
- Brazier, M., Allen, N., *'Criminalising medical malpractice'* in Charles Erin and Suzanne Ost (eds), *The Criminal Justice System and Health Care* (2007) Oxford University Press.
- *'Medical or managerial manslaughter?'* in Charles Erin and Suzanne Ost (eds), *The Criminal Justice System and Health Care* (2007) Oxford University Press.
- *'Necessity, Incapability and Emergency'* in Steven Hedley and Margaret Halliwell (eds), *The Law of Restitution* (2002) Butterworths Common Law Series.

## Legal Journals

- Allen, N. et al, *'Advance decisions to refuse treatment and suicidal behaviour in emergency care: 'it's very much a step into the unknown''* (2019) 5(4) *British Journal of Psychiatry* 1.
- Allen, N. et al, *'The management of patients with an advance decision and suicidal behaviour: A systematic review'* (2019) *British Medical Journal* (open access).
- Ruck-Keene, A., Bartlett, P., Allen, N., *'Litigation friends or foes? Representation of P before the Court of Protection'* (2016) *Medical Law Review* 333-359.
- *'The (not so?) great confinement'* (2015) 5(1) *Elder Law Journal* 45-51.
- *'The Right to Life in a Suicidal State'* (2013) 36 *International Journal of Law and Psychiatry* 350-357.
- Allen, N. and Prescott, A., *'The opacity of sexual capacity'* (2012) 2(4) *Elder Law Journal* 352-357.
- *'Criminal Care: Ill treatment and wilful neglect'* (2012) 2 *Elder Law Journal* 71-75.
- *'Dare to care'* (2011) 1(2) *Elder Law Journal* 167.
- *'The Bournewood gap (as amended?)'* (2010) 18 *Medical Law Review* 78-85.
- *'First do no harm. Second save life?'* (2010) *Journal of Mental Health Law* 180-185.
- David, T., Bray, S., Farrell, A.M., Allen, N., Ellson, S., *'Fitness to practise procedures for undergraduate healthcare students'* (2009) 10 *Education Law Journal* 102-112.
- *'Saving life and respecting death: A Savage dilemma'* (2009) 17 *Medical Law Review* 262.
- *'Is capacity "in sight"?'* (2009) *Journal of Mental Health Law* 165-170.
- *'Restricting movement or depriving liberty?'* (2009) *Journal of Mental Health Law* 19-32.
- *'Protecting the suicidal patient'* (2008) *Journal of Mental Health Law* 93-100.
- *'A human right to smoke?'* (2008) *New Law Journal* 886-887.
- *'All in the mind?'* (2008) *New Law Journal* 848-849.
- *'Re-detention after recent discharge: A role for judicial review?'* (2007) 15 *Medical Law Review* 253-261.
- *'A call for order'* (2007) *New Law Journal* 241.

WC2A 1DD  
Tel: +44 (0)20 7832 1111  
DX: London/Chancery Lane 298  
Fax: +44 (0)20 7353 3978

M2 4WQ  
Tel: +44 (0)16 1870 0333  
Fax: +44 (0)20 7353 3978

WC2A 1DD  
04-03 & 04-04, Maxwell Chamber  
Suites  
Singapore 069120  
Tel: +65 6320 9272

50000 Kuala Lumpur,  
Malaysia  
Tel: +60 32 271 1085

BARRISTERS • ARBITRATORS • MEDIATORS

clerks@39essex.com • DX: 298 London/Chancery Lane • 39essex.com