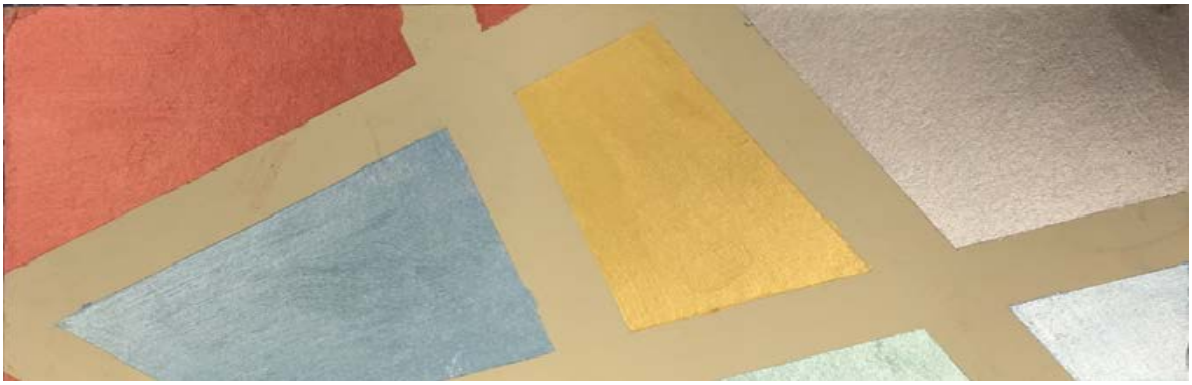
MENTAL CAPACITY REPORT: HEALTH, WELFARE AND DEPRIVATION OF LIBERTY

April 2017 | Issue 75



Welcome to the April 2017 Mental Capacity Report. Highlights this month include:

(1) In the Health, Welfare and Deprivation of Liberty Report: the Court of Appeal overturns the conventional understanding of deprivation of liberty under the MHA; children, consent and deprivation of liberty, changes to inquest requirements in relation to DoLS/*Re X* orders;

(2) In the Property and Affairs Report: new guidance on access to and disclosure of the wills of those lacking capacity, the OPG's good practice guide for professional attorneys and new fixed fees for deputies;

(3) In the Practice and Procedure Report: the Supreme Court pronounces on best interests, available options and case management, a new Senior Judge for the Court of Protection, and updates on case-law relating to funding and HRA damages;

(4) In the Wider Context Report: a new approach to advance care planning and the European Court of Human Rights grapples with Article 12 CRPD;

(5) In the Scotland Report: Scottish powers and English banks, the Scottish OPG cracks down and a review of the second edition of a leading textbook.

We have also published a special report upon the Law Commission's Mental Capacity and Deprivation of Liberty project, with a detailed summary and responses from a range of perspectives. And remember, you can find all our past issues, our case summaries, and more on our dedicated sub-site here, and our one-pagers of key cases on the SCIE website.

Editors
Alex Ruck Keene
Victoria Butler-Cole
Neil Allen
Annabel Lee
Anna Bicarregui
Nicola Kohn
Simon Edwards (P&A)

Scottish Contributors
Adrian Ward
Jill Stavert

The picture at the top, "*Colourful*," is by Geoffrey Files, a young man with autism. We are very grateful to him and his family for permission to use his artwork.

Contents

Law Commission *Mental Capacity and Deprivation of Liberty* project report published

The long-awaited report was published on 13 March. We provide full coverage of it in a special report available here, including a detailed summary of the report by Tim Spencer-Lane, lead lawyer at the Law Commission working on the project, and responses from a range of perspectives. The slides and audio from Alex's breakfast briefing are also available here.

Turning the MHA on its head?

Secretary of State for Justice v MM; Welsh Ministers v PJ [2017] EWCA Civ 194 (Court of Appeal (Sir James Munby P, Gloster LJ V-P, Sir Ernest Ryder, SP))

Article 5 ECHR – DOLS authorisations – Mental Health Act 1983 – conditional discharge – interface with MCA

Summary

This long-awaited decision considers the fall-out of *Cheshire West* in relation to conditional discharges ('MM') and community treatment orders ('PJ') under the Mental Health Act 1983. The appeals proceeded on the basis that both MM and PJ had capacity to consent to the care arrangements in the community that gave rise to their confinement. The principal issues concerned the jurisdiction of the tribunal and the effect of consent in the context of article 5 ECHR.

(a) Necessary implication

In relation to the conditional discharge of MHA s.37/41 restricted patients, the Court of Appeal held that neither the Secretary of State nor the tribunal has a power to deprive liberty outside hospital. Such a power "*would have to be prescribed by law and it is not*" (para 17). Nor was it necessary to imply such a power. To do so would create a power that was "*unconstrained, without criteria, time limits or analogous protections*", with inferior review rights in the community when compared with those in hospital, which would be discriminatory (para 20).

The position was very different for those on Community Treatment Orders. The court was prepared to hold by necessary implication that a responsible clinician (but not the tribunal) has "*a*

power to provide for a lesser restriction of movement than detention in hospital which may nevertheless be an objective deprivation of liberty provided it is used for the specific purposes set out in the CTO scheme" (para 51). The court went on to observe:

> *52. There are limits to what can be provided for in a CTO, for example, it would be wrong in principle for the responsible clinician to make a CTO which has the effect of increasing the levels of restriction to which a patient is subject beyond those applicable in hospital detention. Deprivation of liberty under a CTO is intended to be a lesser restriction on freedom of movement than detention for treatment in hospital.*
>
> *…*
>
> *64 … there is a distinction to be drawn between deprivation of liberty consequent upon compulsory detention in hospital for treatment and a lesser restriction on a patient's freedom of movement that nevertheless amounts to an objective deprivation of liberty. The latter circumstance is a statutory alternative to compulsory detention for a clear purpose as long as the patient is not exposed to a greater restriction than would be the case if s/he were to be compulsorily detained in hospital.*

(b) Relevance of consent for those with capacity

To be "*valid and effective*", "*consent would have to be unequivocal, voluntary and untainted by constraint*" (para 9), with the freedom to change one's mind (para 25). In relation to the role of consent with regard to article 5 ECHR:

> *27. Further, both domestic and Convention jurisprudence strongly doubt the hypothesis that valid consent can prevent a compulsory confinement from being a deprivation of liberty…*
>
> *28 … Where conditions amounting to a deprivation of liberty are compulsorily imposed by law, the agreement of an individual cannot prevent that compulsory confinement from constituting a deprivation of liberty: De Wilde and Ors v Belgium (1979-80) 1 EHRR 373 at [64] and [65].*
>
> *29 … The most common condition that might be a deprivation of liberty is continuous supervision including the lack of availability of any unescorted leave. Even if the question of consent were to be hypothetically relevant, the patient cannot consent in any irrevocable way. He cannot be taken to have waived or have had his right to withdraw his consent removed. There is no scope for consent in a case such as this.*
>
> *30. Accordingly, whether a capacitated patient can consent to a deprivation of liberty is not a decisive issue. A purported consent, even if valid, could arguably go no further than to provide for the subjective element of the article 5 test, it cannot create in the FtT / MHRTW a jurisdiction it does not possess to impose a condition that is an objective deprivation of liberty. Article 5 ECHR does not provide any free standing jurisdiction in a tribunal to impose conditions that have the effect of authorising a deprivation of liberty. A purported consent would also be ineffective in fact. It cannot be an irrevocable consent and it could not act to bind the patient or waive his right to withdraw or rely on, inter alia, articles 5*

> *and 6 ECHR at any time thereafter. A deprivation of liberty is an imposition by the state so that examples of enforceable agreements in other contexts are not analogous.*

Accordingly, if a tribunal is satisfied that a restricted patient is validly consenting to community supervision, and that will protect the patient and the public, then "*it is open to the tribunal to grant an absolute discharge or a conditional discharge on conditions that do not involve an objective deprivation of liberty. The tribunal is well used to identifying cases where there will or will not be compliance with a necessary regime of treatment.*" (para 31).

(c) Restricted patients lacking capacity to consent

The Court of Appeal accepted that where a restricted patient lacks capacity to consent to their community confinement, the Mental Capacity Act 2005 can be invoked to authorise it:

> *35. The power of deferment to permit arrangements to be made for discharge could be used in an appropriate case to invoke the separate jurisdiction of the CoP to authorise a deprivation of liberty if the patient is incapacitated. That might provide free standing deprivation of liberty safeguards in certain factual circumstances but does not provide a basis for a condition of conditional discharge under section 73 that is outside the jurisdiction of the tribunal.*
>
> *36. Accordingly, it cannot be said that it was Parliament's intention to authorise detention outside hospital when a patient is conditionally discharged. If that conclusion presents practical difficulty then it is a matter for Parliament to consider.*

Comment

This is a significant decision in many respects. The court sees the tribunal as performing a narrow role but has identified a more expansive role for responsible clinicians. The judgment means that (a) restricted patients with capacity cannot be lawfully discharged from hospital if the necessary care arrangements satisfy the *Cheshire West* acid test; and (b) responsible clinicians have an implied power to deprive liberty under community treatment orders. Both conclusions are likely to prove contentious.

Consent

Consent is a question of fact and there is no deprivation of liberty where a person with capacity consents to their confinement. Of course we must be careful to ensure that people do not lose the benefit of Article 5 safeguards for the single reason that they have given themselves up to be taken into detention. That is why the threat of detention must not be used to coerce. But an unpleasant choice remains a choice. The ward door may be locked. The nurses and doctors may have holding powers available under s.5 MHA 1983. But if a person with capacity is aware of these measures and nevertheless agrees to be there, then we would suggest that they cannot be said to be deprived of liberty. Indeed, the ECHR jurisprudence even recognises that a person who is said to lack capacity to consent according to domestic law may not be deprived of liberty if they tacitly agree to their confinement: *Mihailovs v Latvia* [2013] ECHR 65, [135]-[140].

If the person with capacity subsequently changes their mind and decides to leave, risk will need to be assessed and a decision taken as to

whether to invoke the compulsory powers. The possibility of compulsion is there, whether the person is in a mental health hospital, on a conditional discharge, or on a community treatment order. In all three scenarios, the person can ultimately be detained in hospital if the corresponding criteria are met. It would therefore be peculiar if consent 'works' for voluntary patients but not for conditionally discharged patients.

It should also be noted that any patient admitted to any hospital is potentially liable to be held there under the powers contained in s.5 MHA 1983 – including any patient in a general hospital receiving physical healthcare. The spectre of compulsion therefore in principle looms large over such patients in circumstances where a different constitution of the Court of Appeal have very recently been at pains to exclude the routine operation of Article 5 ECHR.

In the circumstances, it may well be that the question of what constitutes "valid consent" to confinement will need to be examined further in due course, and it may also be that this will ultimately unlock the key to the *Cheshire West* conundrum. If the true meaning of deprivation of liberty is coercive confinement against the will of the individual concerned, then, by definition, no-one can ever consent to the same. Conversely, if we can sufficiently reliably identify that a person – MEG, say – is seeking to manifest their consent to arrangements which on their face amount to a confinement, should we really say that they are deprived of their liberty?

The Court of Appeal's recognition that the separate jurisdiction of the Mental Capacity Act 2005 can be invoked to authorise the deprivation of liberty of restricted patients lacking capacity to consent is, however, welcome. On a practical level, the court notes that a judge authorised in a tribunal jurisdiction can, with the appropriate judicial ticket, also sit in the Court of Protection and vice versa "*so that in an appropriate circumstance the judge might exercise both jurisdictions concurrently or separately on the facts of a particular case*" (para 32).

CTOs

In relation to CTOs, it is striking that so senior a court (including as it did the heads of the two judicial bodies charged with overseeing the Mental Capacity and Mental Health Acts) set its face so expressly against the conventional understanding of these instruments.

Parliament never intended for community treatment orders to be used to deprive liberty, and the Codes of Practice to both the MHA and DoLS reiterate this (no reference is made to the relevant paragraphs in either by the court). The purpose of CTOs is to reduce readmissions to hospital; not to detain people in the community. Further, if Parliament had intended for CTOs to be used in this way, some of Schedule 1A to the Mental Capacity Act 2005 would have been otiose. For it provides a legal procedure to authorise the deprivation of liberty of incapacitated patients on CTOs (as well, for that matter, as conditional discharges, guardianship, and s.17 leave). It also renders unnecessary the Law Commission's consultation on the issue (Consultation paper, para 10.25) and at least part of its recommendations in its recent *Mental Capacity and Deprivation of Liberty* report (paras 13.26 and 13.27, predicated upon the long-standing understanding that the 'community' provisions of the MHA 1983 do not provide free-

standing authority to authorise deprivation of liberty.

The Court of Appeal's approach also renders unnecessary the Department of Health's consultation (Government Response to No Voice Unheard, No Right Ignored – A Consultation for People with Learning Disabilities, Autism and Mental Health Conditions (2015) Cm 9142, para 87), to which the Law Commission consultation and report made reference.

For the Court of Appeal to decide that this detention power can be necessarily implied is therefore a substantial step. But were they wrong to do so? The court rightly notes that there are safeguards for CTOs:

> *54. The CTO scheme is provided for in a statutory framework that is a procedure prescribed by law. The criteria for the imposition of conditions that may deprive a patient of his liberty are specified in sections 17A(4) to (5) and 17B(2) MHA. They are limited to the purposes of the legislation, for example, for medical treatment. They are time limited by section 17C and they are subject to regular rights of review by sections 20A and 66 which are equivalent to the rights enjoyed by a patient detained in hospital so that there is no incoherence or lack of equivalence in the safeguards provided by the scheme. The conditions in a CTO have to be in writing: see, for example sections 17A(1) and 17B(4). The responsible clinician has the power of recall (sections 17E(1) and (2)) and the powers of suspension and variation (sections 17B(4) and (5)). Accordingly, in our judgment, the framework provides both practical and effective protection of a patient's Convention rights.*

Applying the Court of Appeal's rationale in relation to tribunals and conditional discharges, one might have thought that such a power to detain on a CTO "*has to be prescribed by law and it is not*". Crucially, of course, the safeguard of the AMHP is therefore at the outset of a CTO and at the end if the responsible clinician proposes to revoke it. But fundamentally the tribunal is not reviewing the legality of such community detention. The Court of Appeal incorrectly stated at para 55 of their judgment that "*The power exercisable by the tribunal is to discharge the patient from detention not to 'discharge the CTO'*." This error may have resulted from the incorrect version of s.72(c)(i) MHA 1983 which is appended to the judgment. It refers to one of the CTO criteria as being whether it is "*appropriate for him to be liable to be detained in a hospital for medical treatment*" when in fact the legislation actually requires the tribunal to consider whether it is "*appropriate for him to receive medical treatment*".

Accordingly, and fundamentally, the tribunal is not performing an Article 5(4) ECHR reviewing function for CTOs. A patient could satisfy the statutory criteria for a CTO whilst being subject to an unnecessary deprivation of liberty. The tribunal could do nothing to rectify this: its powers are limited to discharging or not discharging the CTO and the Court of Appeal has narrowed the remit of the tribunal *vis-à-vis* article 5. Discretionary conditions cannot be enforced but the threat of recall looms large. And it seems the patient's only recourse to challenging an unjustified deprivation of liberty in these circumstances would now be through judicial review. This may have left a gap in human rights protection.

Finally, using the logic of this decision, if a responsible clinician has by necessary implication a power to detain on a CTO, so too will they have a power to detain patients on leave under s.17 MHA 1983. This is for two reasons. First, the analogy between the hospital detention power and s.17 leave is tighter than it is for s.17A CTOs. Secondly, and unlike for CTOs, s.17(3) MHA 1983 contains an express power to grant leave into another's custody. Again, if this is correct, it is difficult to see why Parliament would have included express provision for DOLS to be operated alongside s.17 leave in Schedule 1A to the MCA 2005. It is further difficult to see why it was considered necessary by Hayden J to emphasise in *NHS Trust v FG* the importance of having in place a standard authorisation when a patient is given s.17 leave from a psychiatric hospital to be deprived of their liberty in a general hospital for purposes of receiving physical healthcare. We note in this regard that *NHS Trust v FG* of course recently has been endorsed by a different constitution of the Court of Appeal in the *Ferreira* case as exemplifying precisely the sort of situation in which a deprivation of liberty can arise in the context of the delivery of physical healthcare.

Children, consent and Article 5

A Local Authority v D & Ors [2016] EWHC 3473 (Fam) (Keehan J)

Article 5 ECHR – children and young persons

Summary[1]

This case concerned C, a 15 year old man who had been made the subject of a care order in favour of the local authority. The local authority brought this application to obtain the court's authorisation of what it contended was a deprivation of C's liberty in a residential unit.

Under the arrangements, staff knew the whereabouts of C at all times; he was never left alone in the unit; he was never left alone with other residents; he was subject to 1:1 staffing including during breaks at school; he was subject to constant observations by staff and has no free time when he is not observed; the external doors of the unit were locked at night; the bedroom doors were alarmed at night to ensure privacy and to ensure that the whereabouts of all residents were known; the internal doors were locked if C's behaviour necessitated it; C could not leave the unit unsupervised and could not leave unaccompanied without permission; he was monitored at all activities outside of the unit and was accompanied on all recreational and social events; he was not permitted any internet access and the use of his mobile telephone was restricted to four telephone numbers; and C could not travel alone on public transport. The court concluded that C was deprived of his liberty as he was confined, supervised and controlled 24 hours a day.

A key question was whether C could, in law, consent to the deprivation of his liberty. Keehan J accepted the opinion of C's guardian that C was of sufficient understanding and intelligence to enable him to understand fully what was involved in him living in the unit and the restrictions which were imposed on him. The

[1] In line with standard editorial practice, this being a case in which Tor is currently involved, she has not been involved in the production of this note.

judge was satisfied on the evidence that C not only understood those matters but he understood why they were necessary and why and how they benefited him. Following the decision of *Gillick v West Norfolk and Wisbech Area Health Authority* [1985] UKHL7, [1986] 1 FLR224, Keehan J found that C was *Gillick* competent and was capable, in law, of consenting to his confinement at the unit.

Keehan J accepted that C had and would continue to seek the push the boundaries of the restrictions placed upon him and to seek to object or complain about some elements of them, as well as occasionally breach the house the rules. However, he held that, on the facts, C did in fact consent to his confinement and therefore the issue of the court authorising his confinement under the inherent jurisdiction did not arise.

Comment

The court's conclusion that C was confined (i.e. that the objective limb of the Article 5 test for deprivation of liberty was satisfied) is unsurprising one, despite arguments made on behalf of C that he was not being deprived of his liberty. It was submitted on behalf of C that no child who was subject to a care order is free to leave and live with whom they want to, and that this case had the prospect of bringing within the purview of the non-statutory DOLS regime all children who live in care homes or are in foster care. However, this is not the first time that this prospect has been raised. It should not be forgotten that the Supreme Court in *Cheshire West and Chester Council v P; Surrey County Council v P & Q* [2014] UKSC 19 considered that the arrangements for two sisters in foster care amounted to a deprivation of liberty, MEG being 17 at the time that the case began before Parker J.

Keehan J's conclusion that D was able – in law – to consent to that confinement is surely correct, although sits oddly (on one view) with the very different view of consent expressed by the Court of Appeal in the *MM* case discussed elsewhere in this report. His conclusion that, on the facts, C was consenting is more questionable, even if perhaps understandable at a pragmatic level given the legal complexities that would arise in the event that he did not consent.

We still await, of course, the determination by the Court of Appeal of the question of whether a parent can consent to the confinement of a child (whether of any age, or solely aged 15 and below, and whether only where the child lacks capacity to consent or in all situations all being questions that arose during the course of the hearing before the Court of Appeal in February 2017 of the appeal against the decision of Keehan J in *Birmingham CC v D*).

Finally, although the issue did not arise on the facts of the case (and the court's comments are strictly obiter), it is of interest to note that the court did consider whether it could exercise its powers under the inherent jurisdiction to authorise a deprivation of C's liberty if C did not consent to his confinement. The Official Solicitor, who acted on behalf of C's mother (known as D) argued that the use of the inherent jurisdiction to authorise a deprivation of liberty was not compliant with Article 5. Keehan J called this a "bold submission". It was submitted hat the use of the inherent jurisdiction was not accessible – there is no statute, no statutory or non-statutory governmental guidance, and there

is no way to find out the basis on the out the basis on which the inherent jurisdiction would be invoked other than through a decision of the court. It was not precise and not foreseeable as there were no definitive criteria for its use. Keehan J rejected the Official Solicitor's submission and was satisfied that the use of the inherent jurisdiction to authorise the deprivation of liberty of a child or young person was compliant with the procedural requirements of Article 5. However, as the issue did not need to be determined in this case, no further guidance or criteria were provided that could be helpful in future inherent jurisdiction cases.

'Death under DOLS': changes to inquest requirements

From Monday 3 April 2017 coroners no longer have a duty to undertake an inquest into the death of every person who was subject to a DoLS authorisation under the Mental Capacity Act 2005 (or where an order of the Court of Protection authorises the deprivation of the liberty).

In the words of the Ministry of Justice:

> *In these cases an inquest will still be required if the person died before Monday 3 April 2017. However, for any person subject to a DoLS authorisation who dies on the 3rd, or any time after, their death need not be reported to the coroner unless the cause of death is unknown or where there are concerns that the cause of death was unnatural or violent, including where there is any concern about the care given having contributed to the persons death.*
>
> *Any person with any concerns about how or why someone has come to their death can contact the coroner directly. This will not change where a person subject to a DoLS authorisation. What will change is that the coroner will no longer be duty bound to investigate every death where the deceased had a DoLS in place.*

Guidance has been issued by the Chief Coroner, available here. A Home Office Circular has also been issued which covers (at pages 11 ff) the relevant changes. Both the Circular and the Chief Coroner's Guidance leave open the apparent paradox that a result of the changes introduced on 3 April may be that inquests are required on "state detention" grounds because a person is deprived of their liberty and an authorisation is awaited but not yet granted (at which point, they would have ceased to be considered to be under state detention). That would appear to be an entirely perverse result, and we would strongly suspect that a court would find a way to hold that an inquest is not required on "state detention" grounds alone in such circumstances.

LAA funding for s21A applications

Peter Edwards Law has posted online a letter received from the Legal Aid Agency which confirms that for any period within s.21A proceedings during which a DOLS authorisation is not in place, non-means tested funding will not be provided. If there is a gap between authorisations, funding will be suspended for that period.

This has been the position since at least the decision in *Re UF* (2013) when Charles J explained that the solution was for the court to continue in force the relevant authorisation, or otherwise bring about the result that a standard authorisation is in existence, to ensure that

funding is in place. The usual approach in the editors' experience is to obtain an order which extends the standard authorisation's duration pending further hearing, and if this should extend beyond the 12 month limit, require the supervisory body to ensure that a new authorisation is put in place without any gap. If the court has not identified the need of its own motion, then ensuring that either such an extension or a fresh authorisation is required is therefore a critical aspect of the duty of any publically funded Counsel or solicitor involved in such cases.

"Vulnerable adults" call for evidence

Together with two partners (the Association for Real Change, a learning disability charity and Autism Together), Alex[2] is seeking to persuade the Law Commission to include within its 13th programme of law reform a project to look at the criminal and civil measures to support and protect those who fall outside the scope of the Mental Capacity Act 2005 and domestic violence legislation. His proposal has made it through the first sift; to maximise the chances that it is taken forward he is seeking further evidence and support to forward on to the Law Commission to add to the very considerable body that he has been provided with so far following posts on his website, in chronological order here, here and here. To address one immediate terminological elephant, he emphasises that he is well aware of the potential problems with the term "vulnerable adults," (which is nonetheless used by the High Court for purposes of identifying those in respect of whom it can deploy the inherent jurisdiction), and would see part of the Law Commission's project as being to identify the correct term for the cohort of individuals in question.

[2] In a private capacity; whilst he remains on secondment to the Law Commission as a consultant to the Mental Capacity and Deprivation of Liberty project, this is a separate venture.

Editors and Contributors

Alex Ruck Keene: alex.ruckkeene@39essex.com

Alex is recommended as a 'star junior' in Chambers & Partners for his Court of Protection work. He has been in cases involving the MCA 2005 at all levels up to and including the Supreme Court. He also writes extensively, has numerous academic affiliations, including as Wellcome Trust Research Fellow at King's College London, and created the website www.mentalcapacitylawandpolicy.org.uk. To view full CV click here.

Victoria Butler-Cole: vb@39essex.com

Victoria regularly appears in the Court of Protection, instructed by the Official Solicitor, family members, and statutory bodies, in welfare, financial and medical cases. Together with Alex, she co-edits the Court of Protection Law Reports for Jordans. She is a contributing editor to Clayton and Tomlinson 'The Law of Human Rights', a contributor to 'Assessment of Mental Capacity' (Law Society/BMA 2009), and a contributor to Heywood and Massey Court of Protection Practice (Sweet and Maxwell). To view full CV click here.

Neil Allen: neil.allen@39essex.com

Neil has particular interests in human rights, mental health and incapacity law and mainly practises in the Court of Protection. Also a lecturer at Manchester University, he teaches students in these fields, trains health, social care and legal professionals, and regularly publishes in academic books and journals. Neil is the Deputy Director of the University's Legal Advice Centre and a Trustee for a mental health charity. To view full CV click here.

Annabel Lee: annabel.lee@39essex.com

Annabel appears frequently in the Court of Protection. Recently, she appeared in a High Court medical treatment case representing the family of a young man in a coma with a rare brain condition. She has also been instructed by local authorities, care homes and individuals in COP proceedings concerning a range of personal welfare and financial matters. Annabel also practices in the related field of human rights. To view full CV click here.

Anna Bicarregui: anna.bicarregui@39essex.com

Anna regularly appears in the Court of Protection in cases concerning welfare issues and property and financial affairs. She acts on behalf of local authorities, family members and the Official Solicitor. Anna also provides training in COP related matters. Anna also practices in the fields of education and employment where she has particular expertise in discrimination/human rights issues. To view full CV click here.

Editors and Contributors

Simon Edwards: simon.edwards@39essex.com

Simon has wide experience of private client work raising capacity issues, including *Day v Harris & Ors* [2013] 3 WLR 1560, centred on the question whether Sir Malcolm Arnold had given manuscripts of his compositions to his children when in a desperate state or later when he was a patient of the Court of Protection. He has also acted in many cases where deputies or attorneys have misused P's assets. To view full CV click here.

Nicola Kohn: nicola.kohn@39essex.com

Nicola appears regularly in the Court of Protection in health and welfare matters. She is frequently instructed by the Official Solicitor as well as by local authorities, CCGs and care homes. She is a contributor to the 4th edition of the *Assessment of Mental Capacity: A Practical Guide for Doctors and Lawyers* (BMA/Law Society 2015). To view full CV click here.

Adrian Ward: adw@tcyoung.co.uk

Adrian is a Scottish solicitor, a consultant at T C Young LLP, who has specialised in and developed adult incapacity law in Scotland over more than three decades. Described in a court judgment as: *"the acknowledged master of this subject, and the person who has done more than any other practitioner in Scotland to advance this area of law,"* he is author of Adult Incapacity, Adults with Incapacity Legislation and several other books on the subject. To view full CV click here.

Jill Stavert: j.stavert@napier.ac.uk

Jill Stavert is Professor of Law, Director of the Centre for Mental Health and Incapacity Law, Rights and Policy and Director of Research, The Business School, Edinburgh Napier University. Jill is also a member of the Law Society for Scotland's Mental Health and Disability Sub-Committee, Alzheimer Scotland's Human Rights and Public Policy Committee, the South East Scotland Research Ethics Committee 1, and the Scottish Human Rights Commission Research Advisory Group. She has undertaken work for the Mental Welfare Commission for Scotland (including its 2015 updated guidance on Deprivation of Liberty). To view full CV click here.

Conferences

Conferences at which editors/contributors are speaking

Scottish Paralegal Association Conference

Adrian will be speaking on adults with incapacity at this conference in Glasgow on 20 April 2017. For more details, and to book, see here.

Deprivation of liberty: what does the future hold?

Alex will be speaking at this event on 5 May in Consett, County Durham on 5 May. For more details, and to book, see here.

Advertising conferences and training events

If you would like your conference or training event to be included in this section in a subsequent issue, please contact one of the editors. Save for those conferences or training events that are run by non-profit bodies, we would invite a donation of £200 to be made to Mind in return for postings for English and Welsh events. For Scottish events, we are inviting donations to Alzheimer Scotland Action on Dementia.

Our next Newsletter will be out in early May. Please email us with any judgments or other news items which you think should be included. If you do not wish to receive this Report in the future please contact: marketing@39essex.com.

David Barnes
Chief Executive and Director of Clerking
david.barnes@39essex.com

Michael Kaplan
Senior Clerk
michael.kaplan@39essex.com

Sheraton Doyle
Senior Practice Manager
sheraton.doyle@39essex.com

Peter Campbell
Senior Practice Manager
peter.campbell@39essex.com

International Arbitration Chambers of the Year 2014 Legal 500

Environment & Planning Chambers of the Year 2015

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

LONDON
81 Chancery Lane,
London WC2A 1DD
Tel: +44 (0)20 7832 1111
Fax: +44 (0)20 7353 3978

MANCHESTER
82 King Street,
Manchester M2 4WQ
Tel: +44 (0)16 1870 0333
Fax: +44 (0)20 7353 3978

SINGAPORE
Maxwell Chambers,
#02-16 32, Maxwell Road
Singapore 069115
Tel: +(65) 6634 1336

KUALA LUMPUR
#02-9, Bangunan Sulaiman,
Jalan Sultan Hishamuddin
50000 Kuala Lumpur,
Malaysia: +(60)32 271 1085