

## Capacity outside the Court of Protection

### Introduction

Welcome to the December 2015 Newsletters. Highlights this month in a bumper set include:

- (1) In the Health, Welfare and Deprivation of Liberty Newsletter: landmark best interests and capacity decisions in the medical treatment sphere, more on the cross-over between the MHA and the MCA, forced marriage, and the CQC's latest DOLS report;
- (2) In the Property and Affairs Newsletter: gratuitous care, conflicts of interest and the OPG's new guidance on safeguarding;
- (3) In the Practice and Procedure Newsletter: a very important decision on fact-finding (and when it is and is not necessary), and guidance – by analogy – from the Supreme Court on the 'urgency' cross-border jurisdiction of the Court of Protection;
- (4) In the Capacity outside the COP Newsletter: DNACPRs notices and capacity, a College of Police Consultation on Mental Health practice, a coroner fully grasping capacity, the inaugural UK Mental Disability Law Conference and a book corner;
- (5) In the Scotland Newsletter: important amendments to the Education (Scotland) Bill, an important – and troubling – judicial review decision on ordinary residence in the cross-border context and guidance from the MWC on hidden surveillance.

And remember, you can now find all our past issues, our case summaries, and much more on our dedicated sub-site [here](#). 'One-pagers' of the cases in these Newsletters of most relevance to social work professionals will also shortly appear on the SCIE [website](#).

We are taking a break over the holiday period so (those of you who get them) happy holidays, and we will return in February from the new COP Towers in Chancery Lane.

### Editors

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### Guest contributor

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For all our mental capacity resources, click [here](#). Transcripts not available at time of writing are likely to be soon at [www.mentalhealthlaw.co.uk](http://www.mentalhealthlaw.co.uk).

## DNACPR notices – applying the principles

### Summary

#### Facts

Carl Winspear was twenty-eight years old when he died shortly after 11.00 pm on the 3 January 2011. He had suffered all his life from cerebral palsy, epilepsy, spinal deformities and other associated health conditions. At the time of his death and all other relevant times he lacked capacity within the meaning of the MCA 2005. Carl had been unwell for a few days beforehand and suffered from chest infections. He was admitted to his local hospital on 2 January 2011 around 3.00 pm. His mother, Elaine, stayed with Carl from his arrival at the hospital until about 9.00pm. When she left she had no particular concern for his future. Before she went to bed that night she contacted the hospital around 10.00pm and was told that Carl was the same.

In the middle of the night, a specialist registrar placed on Carl's clinical record a notice to the effect that cardio-pulmonary resuscitation should not be attempted (DNACPR). This was done without consultation with Ms Winspear or any other family member or person representing Carl's interests. The registrar recorded in Carl's medical record "DNAR. Speak to family in the morning." The printed DNACPR notice itself was not fully filled in; the sections dealing with the date of order, with whom the decision was discussed and the counter signature by the consultant were not completed. The decision was to last 48 hours.

The registrar made the decision regarding the placement of the DNACPR notice on clinical grounds as a result of information he had about

Carl's condition. He noted that Carl had cerebral palsy, limited communication and was bed-bound. He had pyrexia and hypoxia on arrival at A&E; he had a severely deformed spine (kyphosis); it was considered that he was likely to be suffering pneumonia and was in a frail state. He concluded that CPR would be inappropriate in the event of a cardiac arrest because Carl's severe kyphosis and contractures in his arm made effective performance of it impossible.

In a subsequent witness statement the registrar explained that that he did not want to inflict on Carl a treatment that was distressing, painful, undignified and futile because it had no chance of success. The doctor did not think that there was an imminent risk of cardiac or respiratory collapse but made the decision that he did to avoid the possibility of the nursing staff being obliged to administer CPR, even if the chance of it needing to be administered was remote.

The registrar did not discuss matters with Carl's mother:

*"firstly because I did not think that the deceased was at high risk of unexpected deterioration over the next five hours and in my view was, although unwell, in a stable condition. Secondly because the decision was not based on a judgement about his quality of life at the time but rather the futility and ineffectiveness of CPR as a intervention in his case. In these circumstances I did not think that it was necessary or appropriate to call his next of kin at that time. It is correct that the form was not fully completed. My intention was that the missing part would be completed the following morning after discussion with the next of kin."*

Carl's condition was reviewed by the registrar and a consultant at 8.30 am shortly before the registrar went off night duty. No further

completion or variation of the DNACPR notice occurred. The medical notes of that meeting set out five items for the treatment plan of which point four reads “speak to family later re resuscitation status.”

Ms Winspear contacted the hospital at 11.00am and was told again that Carl was stable and was on his oxygen. Shortly after this call she received a further call and was told that the doctors wanted to speak to her before visiting hours had started. She did not have the impression that this meeting was urgent because of a deterioration in Carl's health. She arrived later that morning and had a conversation with a Dr Farrer, a consultant cardiologist and Clinical Director of the directorate of emergency care of the hospital. The precise terms of that conversation were a matter of dispute, there is no doubt that the question of cardiopulmonary resuscitation arose in the course of it. Ms Winspear expressed her strong disagreement with the suggestion that if Carl stopped breathing resuscitation should not be attempted. Although he was severely disabled she did not want him treated differently from any other patient and considered he enjoyed a reasonable quality of life at home with her. Following Ms Winspear's discussion with Dr Farrer, the DNACPR notice was cancelled. Carl was moved to an intensive care unit later that day, where he died in the evening.

In December 2011 the claimant issued proceedings by way of a Part 7 claim form for a declaration under the HRA. She argued that placing the DNACPR notice on Carl's medical record from 3.00 am until it was cancelled sometime after 12.30 without any consultation with a person who had been caring for or representing his interests was a procedural failure and has resulted in Carl's right to respect for private life under Article 8(1) of the European

Convention on Human Rights (ECHR) being interfered with without justification. The proceedings were stayed pending the determination by the Court of Appeal of the [Tracey](#) case, and then restored for trial.

#### *The issue*

The Court of Appeal in *Tracey* made clear that, absent convincing reasons to the contrary, an adult patient with capacity has to be involved in the process that leads to the completion of a DNACPR notice, and that the very decision to complete a notice (whether or not it actually had any material difference to the treatment given) represented an interference with the patient's private life under Article 8 ECHR.

The issue for Blake J was the extent to which the principles in *Tracey* could be read across to a case of an adult patient without capacity; this then led him into a detailed consideration of the role of s.4(7) MCA 2005.

#### *Blake J's decision*

As Blake J noted: “[t]here is nothing in the case of *Tracey* or the *Strasbourg* case law to suggest that the concept of human dignity applies any the less in the case of a patient without capacity” (paragraph 45). He therefore accepted the claimant's case that the core principle of prior consultation before a DNACPR decision is put into place on the case file applies in cases both of capacity and absence of capacity.

Blake J also accepted the Trust's submission that the practical exigencies relating to communication differ if the patient who is being treated by a doctor cannot communicate his wishes and beliefs. However,

*“46.[...] [i]n my view, those considerations go to the question whether there is a convincing reason to proceed to implement a DNACPR decision without prior consultation. In the case of persons who lack capacity, the MCA spells out when and with whom a decision taker must consult; if it is not 'practicable or appropriate' to consult a person identified in s.4 (7) before the decision is made or acted on, then there would be a convincing reason to proceed without consultation.*

*47.If, on the other hand, it is both practicable and appropriate to consult then in the absence of some other compelling reason against consultation, the decision to file the DNACPR notice on the patient's medical records would be procedurally flawed. It would not meet the requirements of s.4(7) MCA; it would accordingly not be in accordance with the law. It would be an interference with Article 8(1) that is not justified under Article 8(2) for two reasons:-*

- i) a decision that is not taken 'in accordance with law' cannot justify an interference with the right to respect afforded under Article 8(1);*
- ii) if consultation was appropriate and practicable there is no convincing reason to depart from it as an important part of the procedural obligations inherent in Article 8.*

*48. The discharge of this procedural obligation is not a matter of challenging a clinical judgment as to the appropriate treatment for a patient. The formation of such a judgment is a necessary first step in the decision making process before a DNACPR notice is placed on file but not generally a sufficient one.*

On the facts of the case before him, Blake J was not satisfied that it was other than practicable and appropriate to have attempted to contact Ms Winspear before the DNACPR notice was affixed to Carl's records. He was therefore satisfied that there was a breach of the s.4(7) MCA 2005, such that no s.5(2) MCA 2005 defence existed to this claim, and also that there was a violation of the procedural duty under Article 8(2) ECHR. Blake J granted her a declaration reflecting the procedural breach of Article 8(2) ECHR, a declaration alone (on the facts of this case) representing just satisfaction.

### Comment

This decision is significant, firstly, for confirming that the principles set down in *Tracey* apply across the board. It is likely to mean that the most recent iteration of the [guidance](#) on Decisions Relating to Cardiopulmonary Resuscitation (updated after *Tracey*) will need to be modified further so as to make express reference to the procedural requirements of s.4(7) MCA 2005 when it comes to decisions made in the context of those who do not have capacity to participate in the discussions relating to DNACPR notices.

The decision is also significant far beyond the (narrow, but important) context of DNACPR notices. The question of what, precisely, the impact of a failure to comply with s.4(7) MCA 2005 means in relation had been touched upon previously but not conclusively determined by the Court of Appeal in [ZH v Cmr of the Police for the Metropolis](#) [2013] EWCA Civ 3021 (at paragraph 41, not 51 as noted by Blake J). Blake J has made clear that:

1. Section 4(7) imposes a duty to consult those identified in the section unless it is not

practicable and appropriate to do so (i.e. active steps must be taken to consult, rather than simply passively taking into account views that the decision-maker may be aware of);

2. A failure to comply with that duty will mean that the decision-maker cannot then rely upon s.5 MCA in any claim brought for breaches of the ECHR (or, logically, at common law, for instance for trespass to the person where a procedure is carried out upon them).

This decision therefore shows that s.4(7) is – and should – have teeth. It is important also in this context to remember the purpose of consultation – it is not merely to obtain the views of relevant individuals as to what they would like, but “*in particular [to obtain] their view of what [P’s] attitude would be,*” as a vital component in making the decision that is “*right for P as an individual human being*” ([Aintree](#) at paragraphs 39 and 45).

## Short note: capacity and coroners

In a case illustrating that an understanding of mental capacity is necessary for coroners, it is [reported](#) that an inquest in Staffordshire recorded that a 58 year old man, David Walwyn, committed suicide by refusing to eat. In reaching that conclusion, it is reported that assistant coroner for Staffordshire South, Margaret Jones, said: “*He made it clear he had chosen to die and refused support. It was his right to refuse to eat as he had the mental capacity.*”

Mr Walwyn died on 2 July 2015 after he stopped eating on 28 March 2015. The inquest heard he had left a suicide note with his cousin and had made it clear that he wanted to die.

A representative for South Staffordshire and Shropshire Healthcare NHS Foundation Trust gave evidence at the inquest. She said Mr Walwyn, who lived alone, had a longstanding history with mental health services but that in relation to the decision not to eat he had been assessed as having capacity: “*a psychiatrist and his GP met with his cousin. The Trust assessed his capacity to make a decision that he wanted to die by stopping eating and we had to respect that. He had mental capacity throughout.*”

## College of Policy Consultation on Mental Health Practice

The College of Policing has launched a [consultation](#) on its mental health authorised professional practice to provide guidance to the police service in England and Wales. It is wide ranging in its scope, covering strategic considerations, mental vulnerability, capacity and illness, detention, crime and criminal justice. This is a great opportunity for those with a view on mental health and policing to express those views to inform the final version of the guidance. The consultation closes on 1 January 2016.

Insofar as the mental capacity provisions are concerned, we note there are a number of legal inaccuracies which will hopefully be ironed out during this consultation stage. For example, of some concern (not least as it reflects a misunderstanding that we regularly encounter) is the indication that the police can deprive liberty using MCA s4B. It is important to understand that this provision, relating to deprivation of liberty necessary for life-sustaining treatment or vital acts, is only available “*while a decision as respects any relevant issue is sought*” from the Court of Protection. It cannot therefore be used by the police (or anyone else) outside court proceedings.

## No voice unheard no right ignored: the government response

In November the government [published](#) its response to “*No voice unheard, no right ignored - a consultation for people with learning disabilities, autism and mental health conditions*”

The response states that the consultation is aimed at accelerating progress to achieve four things:

- people in charge, supported by family and friends;
- inclusion and independence in the community;
- the right care in the right place, and
- very clear accountability and responsibility throughout the system.

The consultation response is structured around 5 key aims, intended to make differences between now and 2020 so that people should:

1. expect to be supported to live independently as part of a community and in a home they have chosen;
2. know their views will be listened to and be able to challenge decisions about them and about their care;
3. have clearly stipulated rights within the Mental Health Act;
4. be able to exercise control over the support they receive with a personal budget, and expect that different health and local

services will organise themselves around their needs, and

5. know that professionals are looking out for their physical health needs as well as their mental health needs.

The government proposals for the 5 aims are as follows:

**Aim 1: people should expect to be supported to live independently as part of a community and in a home they have chosen.**

Proposals:

- guidance for commissioners of health and social care services on:
  - promoting wellbeing, and factors to take into account when considering living arrangements, including how to support people to live independently, in the community and respecting their wishes and desires;
  - exercise of *Care Act 2014* local ‘market-shaping’ duties to further aid the development of a diverse market of community-based provision, and
  - the need to ensure sufficiency of supply of community-based provision.
- amend Mental Health Act regulations to change the information required on admission so that Approved Mental Health Professionals have to consider and record whether assessment and treatment could be provided without detention in hospital.



**Aim 2: people should know their views will be listened to and be able to challenge decisions about them and about their care.**

Proposals:

- consider how Care and Treatment Review principles/processes can (i) be extended to local authority-led and other placements and (ii) be strengthened, including if necessary by statutory force;
- consider how learning from implementation of CTRs can inform the Care Programme Approach (CPA), and whether this guidance could helpfully be updated/expanded (subject to the Law Commission's consultation in the context of Deprivation of Liberty safeguards) consider introduction of a single advocacy model bringing together existing statutory schemes (including Independent Mental Health Advocates and Independent Mental Capacity Advocates) and providing these on an opt-out (rather than opt-in) basis;
- pilot access to a named social worker who will provide professional advice and support, be the primary point of contact for the service user and their family/carers wherever the person is being supported, and provide a professional voice across the system;
- strengthen work being undertaken as part of the Transforming Care Programme's 'empowering people' workstream and/or the Department's strategic partner programme to:
  - build on the new accessible information standard to ensure that people receive information in formats that they can understand, and that they receive

appropriate support to help them to communicate;

- build on the proposal of a (nonstatutory) 'Charter of Rights' to provide definitive and accessible information on their rights, and how to access support to exercise them, and promote use of advance statements;
- guidance for commissioners of health and social care services on involving people with learning disabilities/ autism/mental health conditions in the design, development and delivery of services;
- monitor implementation of the new service model for commissioners of health and social care services, and of Care and Treatment Reviews on care planning, admissions, transfers and discharges and consider the need for further legislative proposals in response to a review of impact.

**Aim 3: people should have clearly stipulated rights within the Mental Health Act.**

Proposals:

- recognising the issues for people with learning disabilities, autism and mental health conditions in the criminal justice system:
  - an end to the use of police cells as a place of safety for children and young people detained under sections 135 or 136 of the Mental Health Act 1983
  - no one detained under sections 135 or 136 to be held in a 'place of safety' for more than 24 hours without being

assessed by a relevant professional and either discharged or admitted (this and the above to be achieved via the Policing & Criminal Justice Bill together with other changes resulting from the review of sections 135/136)

- subject to further consultation, make changes to the Mental Health Act 1983:
  - enabling patients and families to challenge whether their wishes and feelings were appropriately considered when making applications for detention;
  - amending provisions regarding “nearest relative” to ensure this meets the wishes and needs of people subject to the Act;
  - making the Mental Health Act Code of Practice statutory guidance for NHS commissioners as it is for professionals, local authorities and providers;
- review safeguards regarding renewals of detention (e.g. expansion of requirement for an independent second doctor’s opinion);
- propose amending the Act to make provisions about the discharge of patients to community placements amounting to a deprivation of liberty;
- further consideration in principle of whether and how the Mental Health Act should apply to people with learning disabilities and/or autism and if this remains appropriate.

**Aim 4: people should be able to exercise control over the support they receive with a personal budget, and expect that different health and local services will organise themselves around their needs.**

Proposals:

- review data available for local and national transparency and accountability with metrics including:
  - delayed discharges;
  - personal budgets/integrated budgets;
  - integrated personal commissioning;
- work with NHS England and the Local Government Association to develop guidance and tools (e.g. consent templates) to ensure information is shared legitimately and in accordance with professional standards and good practice; and
- consider what further actions are required to embed solutions to generic data governance issues, especially where data sharing is currently impeded in relation to the care of people with learning disabilities, autism and mental health conditions, where this would meet aims of good commissioning practice and improved patient care.

**Aim 5: people should know that professionals are looking out for their physical health needs as well as their mental health needs.**

Proposals:

- guidance to commissioners of health and social care services to clarify responsibilities for ensuring physical healthcare needs are met alongside mental health needs;
- subject to further consultation, make changes to the Mental Health Act 1983



regarding responsibility to ensure physical care needs are met for mental health inpatients/detained patients to ensure the individual is registered with a general practitioner and is able to benefit from programmes such as individual health checks, screening tests and health action plans.

A very considerable degree of skepticism has been expressed on social media and elsewhere as to the extent to which any of the above will actually be translated into legislation (or otherwise be brought to bear so as to make real changes). It will be necessary to ensure that pressure continues to be brought to bear to ensure that the document does not simply start to gather dust on the shelves in Whitehall.

## Inaugural UK Mental Disability Law Conference

The Inaugural UK Mental Disability Law Conference is to be held at Nottingham on 30 June and 1 July 2016. This conference is intended to bring together academics and other scholars with an interest in mental disability law for the first meeting of what it is hoped will be an ongoing academic association or network. Unlike the SLSA, this is a specific conference devoted to mental disability law (including issues relating to mental health/psychosocial disability, learning disability, disabilities associated with old age and mental capacity). The inaugural conference is sponsored jointly by the School of Law at the University of Nottingham and the Institute of Mental Health, with the endorsement of the Human Rights Law Centre at the University of Nottingham.

The Nottingham conference will combine plenary and breakout sessions. It is expected that half

the presenters at plenary sessions will be people with lived experience of mental health/mental disability services. It is also hoped that at least one fifth of the delegates to the conference will have such lived experience.

The Nottingham conference organisers invite offers of papers for the breakout sessions from scholars of any discipline relevant to law and governance relating to mental disability (including psychosocial disabilities/mental health problems, learning disabilities, and dementia and related disorders of old age). There is no restriction on methodology: papers may be empirical, policy-centred, historical, analytic, traditional legal, or theoretical, in approach. The deadline for offers of papers for the breakout sessions is 1 May 2016.

A pre-conference is planned for post-graduate students, prior to the Nottingham conference.

For further information please email [karen.sugars@nottshc.nhs.uk](mailto:karen.sugars@nottshc.nhs.uk).

## Book corner

For all those looking for Christmas gifts, we have gathered together three book reviews (two by Alex, one by Annabel) for your consideration.<sup>1</sup>

Care Act Manual: 2<sup>nd</sup> edition: Tim Spencer-Lane (Sweet & Maxwell, 2015, paperback, £72)<sup>2</sup>

In between trying to sort out the law relating to deprivation of liberty, Tim Spencer-Lane has done us all an enormous favour by updating his

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<sup>1</sup> Full disclosure: we grateful to the author and publishers respectively for providing us with copies of the three works reviewed. We are always happy to review works in the field of mental capacity (broadly defined).

<sup>2</sup> Review by Alex.

invaluable Care Act Manual. He knows more about this topic than anyone else, having led the Law Commission project leading ultimately to the Care Act. In the first edition of the book, published in 2014, he shared that knowledge with us at a time when we had yet to have the statutory guidance and most of the necessary secondary legislation. The first edition, therefore, of necessity represented to some extent speculation as to what might happen, in circumstances where, as we all know, the devil is in the detail.

We now know much of the detail (not all of it good). This second edition therefore includes expert commentary on the secondary legislation, as well as the statutory guidance (running, alone, to some 500 pages). It is therefore a very much a book that is in every way much bigger than the last edition. What the book loses in portability, however, it more than makes up for in the width and depth of its coverage of Part 1 of the Care Act, the relevant schedules, and the supporting apparatus.

As with the previous edition, the Manual does not seek to address the other parts of the Act, and to this extent the title is misleading. However, for anyone who needs to grapple with the new regime for the provision of social services in England, this book is absolutely invaluable.

[Deprivation of Liberty: A Handbook](#): HHJ Nasreen Pearce and DJ Sue Jackson (Jordan Publishing, 2015, £45; paperback; ebook)<sup>3</sup>

This timely book, published by Jordans, seeks to distil the substantive and procedural law relating to deprivation of liberty in the health and social care sectors down to manageable proportions

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<sup>3</sup> Review by Alex.

(both in terms of complexity and in terms of length). As to the latter, the handbook succeeds excellently – commentary, relevant statutory provisions, guidance and forms are all to be found in 250 pages (of which just over 100 pages represents commentary). As to the former, the authors – a retired Circuit Judge and current District Judge – have succeeded in substantial part in pulling together the various complex threads in a clear and simple (but not simplistic) fashion. They have, however, been somewhat hampered by the fast-moving pace of developments in the area; whilst they managed (just) to lever in the *NRA* decision of Charles J in September, they opined that it would be likely to be appealed, which has not happened; they were also unable to include coverage of the *LF* decision relating to deprivation of liberty in the ICU setting. The law is therefore very much (and very clearly stated as being) as at September 2015.

With that caveat, though, the book stands as an extremely useful primer for those new to the area and, in particular, for lawyers needing to navigate their way around the provisions. In terms of other professionals, I might respectfully suggest it could usefully be read alongside the Law Society's [Practical Guide to Deprivation of Liberty](#), which includes significantly greater coverage of what deprivation of liberty actually looks like on the ground. It is perhaps only because I was so involved in this Guide that I regretted the absence of any mention of it in the book – notwithstanding the fact that it was commissioned by the Department of Health to stand as an informal update to Chapter 2 of the DOLS Code of Practice (which is also – perhaps curiously – also missing).

There are a couple of minor quibbles that I might have with some of the authors' commentary (in

particular, the comment at 6.5.4 as to new COP Rule 3A(1)(a)(e) is, with respect, just plain wrong: it is not a meaningless provision but is, rather, the provision that enables the COP to dispense with joining P in the vast majority of applications to it – i.e. uncontested property and affairs). However, overall, and with the caveat that it will be necessary for those reading the book to ensure that they take steps to keep themselves updated as the law continues to involve, the authors are to be commended on an extremely useful introductory guide to this bewilderingly complex area of the law which fits well into the Jordan’s stable of practitioner texts.

[A Practical Guide to the Mental Capacity Act 2005: Putting the Principles of the Act into Practice](#); Matthew Graham and Jakki Cowley (Foreword by Alex Ruck Keene) (Jessica Kingsley Publishers, 2015, £19.99, paperback, ebook)<sup>4</sup>

This succinct book concentrates less on the theory of mental capacity law and more on the practice. Starting with a chapter on “A New Culture of Care”, the book sets mental capacity issues in a wider practical context. In navigating the key topics in mental capacity law, covering capacity, advocacy, care planning, best interests and liberty, the book offers helpful practical tips and guidance throughout.

The spirit of the Mental Capacity Act resonates throughout the text. For example, in addition to the chapter on “Assessing Capacity”, there is a chapter on “Maximising Capacity” which emphasises the importance of providing appropriate support so that a person may be able to make their own decisions. The themes of independence, liberty and empowerment are recurrent throughout the guide and the emphasis

is very much on the support that can be offered to individuals.

There are a number of useful practical tools which feature in this guide, such as a sample report for IMCAs, sample agenda for best interests’ meetings and a checklist for supported decision-making. The case studies, based on real life examples, are particularly useful for exploring various scenarios in which the Act plays a part.

In summary, this book is a useful resource for practitioners. It is an excellent plain-English guide to the Mental Capacity Act 2005. The points are neatly broken down into bitesize sections (often in bullet-points) which makes the text easy to read and digest, or handy as a quick reference guide.

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<sup>4</sup> Review by Annabel.

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## Conferences at which editors/contributors are speaking

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### International Protection of Adults

Alex and Adrian will be participating in a seminar at the British Institute of International and Comparative Law on 11 February on Hague 35 and cross-border matters. More details will be available soon on the BIICL [website](#).

### Fatal Accidents Inquiries and Psychiatric Patients

The next seminar in the Centre for Mental Health and Incapacity Law series will be on Fatal Accidents Inquiries and Psychiatric Patients, to be held on 27 January 2016, the speakers being Jill and Dr John Crichton. More details can be found [here](#).

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### 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.

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We are taking a break over the New Year, so our next Newsletter will be out in early February. Please email us with any judgments or other news items which you think should be included. If you do not wish to receive this Newsletter in the future please contact [marketing@39essex.com](mailto:marketing@39essex.com).

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Alex is recommended as a 'star junior' in Chambers & Partners 2016 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 about mental capacity law and policy, is an Honorary Research Lecturer at the University of Manchester, and the creator of the website [www.mentalcapacitylawandpolicy.org.uk](http://www.mentalcapacitylawandpolicy.org.uk). **To view full CV click here.**



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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](mailto: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](mailto: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](mailto: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.**





**Simon Edwards:** [simon.edwards@39essex.com](mailto: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.**

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**Adrian Ward** [adw@tcyoung.co.uk](mailto:adw@tcyoung.co.uk)

Adrian is a practising 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](mailto:J.Stavert@napier.ac.uk)

Professor Jill Stavert is Reader in Law within the School of Accounting, Financial Services and Law at Edinburgh Napier University and Director of its Centre for Mental Health and Incapacity Law Rights and Policy. 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.**