Mental Capacity Law Newsletter April 2016: Issue 64

Court of Protection: Health, Welfare and Deprivation of Liberty

Introduction

Welcome to the April 2016 Newsletters. Highlights this month include:

(1) In the Health, Welfare and Deprivation of Liberty Newsletter: Charles J and the DOL impasse, sex and marriage, grappling with anorexia, and wishes and feelings in different contexts;

(2) In the Property and Affairs Newsletter: revoking and suspending LPAs, Law Society guidance on fiduciary duties and the OPG on delegation;

(3) In the Practice and Procedure Newsletter: Court of Protection statistics, the appointment of the Chief Assessor for the Law Society Mental Capacity accreditation scheme, statutory charges, contempt of court, and the admissibility of expert evidence;

(4) In the Capacity outside the COP Newsletter: follow-up from the Mental Capacity Action Day, obstructive family members and safeguarding, and end of life care and capacity;

(5) In the Scotland Newsletter: capacity, facility and circumvention, the new Edinburgh Sheriff Court Practice Note, an important case on the ability to apply for appointment as a guardian, and key responses to the Scottish Government consultation on incapacity law.

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.

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What to do, what to do?

Re JM & Ors [2016] EWCOP 15 (Charles J)

Article 5 – deprivation of liberty

Summary

It has been over two years since the Supreme Court handed down its decision in *Cheshire West*. In a further round of test cases, following *Re X* [2015] EWCA Civ 599 and *Re NRA* [2015] EWCOP 59, Charles J continues to grapple with the practical implications of the *Cheshire West* decision for public bodies and the Court of Protection. On this occasion, the issue was who is to be P's Rule 3A representative where there is no family member or friend?

The Secretary of State argued that the court should use its case management powers to direct the local authority to provide or to identify a person who the court could appoint as a Rule 3A representative. The court rejected that approach. In a judgment which was highly critical of the Secretary of State's position, Charles J said at paragraph 17:

> *I am sorry to have to record that in my view the stance of the Secretary of State (through officials at the MoJ and the DoH) in these proceedings has been one in which they have failed to face up to and constructively address the availability in practice of such Rule 3A representatives and so this aspect of the issues and problems created for the COP (and others) by the conclusion in Cheshire West. Rather they have sought to avoid them by trying to pass them on to local government on an approach based on the existence of an accepted possibility rather than its implementation in practice."*

At paragraph 19, Charles J found that the Secretary of State had demonstrated *"…an avoidant approach that prioritises budgetary considerations over responsibilities to vulnerable people who the Supreme Court has held are being deprived of their liberty."*

Charles J considered the evidence of the Official Solicitor which was that, if only a small percentage of the necessary and expected applications were made in the near future, it was inevitable that the Official Solicitor would shortly reach "saturation point" and would not accept further invitations to act as the litigation friend of last resort. The resources of the Official Solicitor are funded by the Ministry of Justice and neither the Official Solicitor nor the Ministry of Justice indicated that it was likely, or even being considered whether, the Official Solicitor would be provided with more resources.

The solution adopted by Charles J was to make an order:

(1) joining both the Ministry of Justice and Department of Health as parties;

(2) inviting the parties to take steps to identify a suitable person for immediate appointment as a Rule 3A representative or identify an alternative procedure available to the COP to meet the minimum procedural requirements;

(3) staying the applications pending the identification of a practically available alternative procedure; and

(4) giving all parties liberty to apply to lift the stay.

That order could and should be made in all other cases such as the present in which there was no

family member or friend who could be appointed as a Rule 3A representative.

Charles J readily acknowledged the consequences that "absent the provision of relevant resources, the likelihood, if not the inevitability, is that this approach will create a backlog comprising a very large number of stayed cases. Plainly this is unfortunate but it will identify the extent of the problem and why the COP and the applicant authorities have not been able to progress the applications for welfare orders to authorise P's deprivation of liberty."

He continued at paragraph 30: "If applicant authorities decide not to spend time and money on making applications that they know are likely to be stayed that backlog will not be as large and the extent of the problem will be less easy to quantify and less obviously placed at the door of the lack of an available court procedure that meets the minimum procedural requirements."

Charles J was at pains to emphasise that the primary responsibility to provide resources to enable the Court of Protection to meet the minimum procedural requirements falls on the Secretary of State, or on the Secretary of State together with local authorities. Charles J offered a number of suggestions to the Secretary of State at paragraph 28:

> *"…There are a number of routes that the Secretary of State could take, alone or with local authorities, to provide the necessary solution. They include:*
>
> *i) The Secretary of State could do effectively what the MoJ and the DoH assert local authorities can and would do without significant expenditure or difficulty if so directed by the COP, namely entering into contracts with providers of advocacy services to supply a pool of persons who can be appointed as Rule 3A representatives. If entered into with the Secretary of State these would be new rather than varied contracts. But effectively the Secretary of State would be doing what he asserts local authorities can and should do by agreement with providers of advocacy services.*
>
> *ii) The Secretary of State could assist local authorities to achieve this result by providing additional resources.*
>
> *iii) The Secretary of State could set up a pool of accredited legal representatives which is a possibility envisaged by Rule 3A made with the concurrence and so support of the Lord Chancellor.*
>
> *iv) The Secretary of State could provide further resources to the Official Solicitor.*
>
> *v) The Secretary of State could make changes to legal aid.*
>
> *vi) The Secretary of State could provide further resources to enable s. 49 reports to be obtained or to create a wider pool of visitors to enable the COP to instruct them to investigate P's proposed placement."*

Importantly, and further or alternatively, his Lordship said that the Secretary of State could take a case back to the Supreme Court and invite it to revisit its decision in *Cheshire West*.

As at the date of going to press, we do not know whether the Secretary of State will seek permission to appeal.

Comment

The sense of frustration in Charles J's judgment is palpable. And the risk of harm to vulnerable people is real. The deadlock between the government and the executive is resulting in those lacking capacity not being moved out of inappropriate care settings because the Court has not authorised the next deprivation of liberty. All practicably workable solutions to meet the increased workload following *Cheshire West* are likely to involve more expenditure in a time of austerity. This is not something that the court can compel the Secretary of State to provide. As the backlog of cases continues to build, we are left wondering whether we have now reached a stalemate. There is, at the moment, no foreseeable way out of this predicament. However, the clear message to public authorities is to continue making applications where an individual is being deprived of their liberty in circumstances requiring authorisation from court.

Rule 3A representatives clarified

Re VE [2016] EWCOP 16 (Charles J)

Article 5 – deprivation of liberty

Summary

In this case, a friend of VE's was appointed as her Rule 3A representative. However, it became apparent during the course of the hearing that local authorities had experience of family members and friends finding it difficult to understand what their role as a Rule 3A representative involved. Charles J took the opportunity to provide an explanation for family members or friends appointed as Rule 3A representatives. Key responsibilities for Rule 3A representatives include:

- Weighing the pros and cons of P's care and support package and comparing it with other available options;
- Considering whether any of the restrictions are unnecessary, inappropriate or should be changed;
- Informing the court about what P has said, and P's attitude towards, the care and support package;
- Checking from time to time that the care and support package is being properly implemented.

Charles J summarised the role in this way:

> *In short, the court is asking you, as someone who knows the position on the ground, to consider whether from the perspective of P's best interests you agree or do not agree that the Court should authorise P's package of care and support.*

The explanatory note also contains a step-by-step guide for dealing with court documentation and for completing a witness statement in form COP 24.

Comment

We hope that Charles J's explanatory note will help family members and friends better understand the role of a Rule 3A representative. Local authorities also have a responsibility to assist family members and friends during the course of an application and should, where appropriate, refer family members and friends to independent legal representatives.

DOL appeals update

Permission has been granted to the claimant to appeal the decision of the Divisional Court in the *Ferreira* case concerning deprivation of liberty in the ICU setting. We will update you when we know when the case will be listed.

Our friend Jonathan at Mental Health Law Online informs us that the appeals against the decisions of Charles J in the *MM* and *PJ* cases will be heard by the Court of Appeal on 8 and 9 June.

Sex and marriage – oh so simple?

LB Southwark v KA (Capacity to Marry) [2016] EWHC 661 (Fam) (Parker J)

Mental capacity – assessing capacity – marriage – sexual relations

Summary

In the *London Borough of Southwark v KA & Ors* [2016] EWHC 661 (Fam), Parker J had to grapple – again – with the question of whether a young person had capacity to consent to sexual relations and to marry. The case concerned a 29 year old man of Bangladeshi origins with learning disabilities, whose family were seeking to arrange a marriage for him as way to secure support for him once his parents became too old. Parker J concluded that the presumption of capacity had not been displaced either in respect of consent to sexual relations or marriage.

Capacity to consent to sexual relations

Parker J was invited to undertake an attempt to reconcile the notoriously tricky authorities in the area, but declined to do so, saying she would apply the statute. The judge did agree with previous authorities (and in particular *IM v LM*) that the tests for capacity in relation to both marriage and sexual relations are not high or complex, the degree of understanding of the 'relevant information' is not sophisticated and has been described as 'rudimentary', the requirement to 'use and weigh' the information is unlikely to figure materially, and that the core relevant information, in respect of sexual relations (1) the mechanics of the act; (2) sexual relations can lead to pregnancy; and (3) that there are health risks caused by sexual relations.

The court was asked to clarify the necessary degree of understanding of the following matters:

- Health risks of sexual activity: what health risks must be perceived and to what extent.
- Whether health risks include a risk of pregnancy, or whether it is a separate risk.
- The extent of the understanding of pregnancy as a consequence and the process of pregnancy, and does there need to be an understanding of a possibility of pregnancy if P is homosexual.
- Is an understanding of any protective method against either pregnancy or disease necessary.
- What is the role of consent and does it relate to the assessment of capacity or the exercise of capacity.

Parker J addressed the issue of consent first, holding that it was not part of the relevant

information but fundamental to capacity:

> *53. In my view consent is not part of the 'information' test as to the nature of the act or its foreseeable consequences. It goes to the root of capacity itself.*
>
> *54. Mr McKendrick submits that consent is the exercise of capacity, and not relevant information. I put it a different way. The ability to understand the concept of and the necessity of one's own consent is fundamental to having capacity: in other words that P "knows that she/he has a choice and can refuse".* [a reference to A Local Authority v H]
>
> *55. I am less certain that consent of the other party is fundamental to capacity.*
>
> *56. The core cases do not specifically deal with this issue: some refer to P's consent and in some there is passing reference to the consent of a partner. None analyses why the latter consent is part of the capacity test.*
>
> *57. Since it is all too possible for sexual contact to take place, and does take place, without consent the necessity for the consent of a partner does not obviously form part of the capacity test, particularly since the issue of consent in the criminal law can give rise to complex debate as to mens rea, particularly in cases of apparent consent or lack of explicit communication of consent.*

Parker J did not, however, expressly have to make any conclusions in relation to these issues because she was satisfied that KA both understood and retained the understanding of necessity of consent of both himself and his partner/spouse.

As regards health and pregnancy, Parker J emphasised how important it was to "decouple" welfare from capacity. She then went to note that *"pregnancy is a separate type of consequence from illness and must be considered separately. It does not constitute ill-health*." She noted that *'it should suffice if a person understands that sexual relations may lead to significant ill-health and that these risks can be reduced by precautions like a condom*,'" and was satisfied that it was sufficient that KA understood that *'illness is a possible consequence of sexual activity'*. KA did not need to understand about condom use to have capacity.

Crucially, Parker J emphasised:

> *73. Even though the statutory criteria need to be looked at individually, evaluation of a particular capacity should not simply be practical but also has a holistic element. It is not an examination in which one has to attain a certain mark in all modules.*
>
> *74. The issue specific question is not whether P lacks capacity in respect of contraception, or disease control... but whether overall looking at the relevant information, capacity is proved absent.*

Capacity to marry

As regards marriage, Parker J emphasised that the test is a simple one (although it is perhaps of note that she considered that it was axiomatic that a person had to have capacity to enter into sexual relations in order to have capacity to marry). Again, she emphasised, the test is one of capacity not of welfare, so she did not

> *77.* [...] *take into account aspects of his decision making which affect the consequence of his decision making, so long as they do not affect the decision making process in itself.*
>
> *78. Nor is it a factor that in a family which facilitates arranged marriage KA is much more*

likely to find a bride than if he was unaided.

79. It is not relevant to his understanding of marriage that he does not understand:

a) That a wife will need to obtain entry clearance.

b) How financial remedy law and procedure works and the principles are applied. The fact that he might lack litigation capacity in respect of financial remedy litigation does not mean that he lacks capacity to marry.

Parker J noted that she did "*not know whether a marriage will truly bring happiness to KA. His disabilities will provide challenges for any wife, and they will be different for a wife who has capacity from one who lacks it. A marriage might lead to distress, conflict and misery for KA and his family, as opposed to enhancement of his life and of his personal autonomy. But it is not for me to weigh up the relative chances of finding a wife who is prepared to love and cherish KA with all his needs against that of finding one who is unequal to the task*."

She also held that she had "*no evidence that KA would necessarily lack litigation capacity to decide to end a marriage or to agree to or resist a divorce. In that unfortunate event that would need to be assessed in context. He might be regarded as a vulnerable adult where a decision in reality would be made for him by others. But all this is for the future and not relevant to his capacity now*."

Comment

On its facts, this case represents an admirable defence of the right of a young person to make their own decisions as to sexual relations and marriage, rather than to be barred in the name of protection. It also represents - on one view – an approach to capacity that, in practice, took account of the cultural circumstances of KA and the approach being adopted by his family to securing for his care in later life. There is therefore much to be applauded in this judgment.

It remains of concern, however, that so apparently "simple" a test as the capacity to consent to sexual relations continues to generate so much litigation about its very meaning, as opposed to its application. Does the fact that so many judges, doing their best to apply the plain words of a statute, come up with so many slightly different interpretations of that statute, itself suggest that we are asking them to answer an impossible question? And this is – of course – to ignore the fact that the test is completely different when it comes to the criminal sphere: being person-, not act-specific.

It is also of note that while Parker J held that KA did not need to understand how financial remedy law and procedure works, it was part of the relevant information to a decision to marry that '*there may be financial consequences*'. Those with a long-ish memory will recall that permission to appeal the decision of Hedley J in *A, B and C v X & Z* [2012] EWHC 2400 (COP) was granted, precisely to consider the extent, if any, to which an understanding of the financial implications of marriage was required, but then discontinued when the subject of the proceedings died.

Wishes, feelings and termination

An NHS Trust v CS (Termination of Pregnancy) [2016] EWCOP 10 (Baker J)

Best interests – medical treatment – P's wishes and feelings

Summary

A Hospital Trust made an application to the Court of Protection in respect of CS who was said to lack capacity, seeking an order that it would be in her best interests to undergo surgery terminating her pregnancy.

CS already had two children. She had been in a relationship with the father of the younger child until recently. It was alleged that her partner was violent towards her. In December 2015 she discovered that she was pregnant by him. Thereafter she told a number of people, including her sister, that she did not intend to keep the baby and that she wanted to have an abortion. She asked her sister to accompany her to the clinic. Some years earlier CS has also had an abortion and on that occasion that sister had also accompanied her to the clinic.

Shortly after the conversation with the sister, CS was allegedly violently assaulted by her partner and sustained serious injuries, including serious head injuries and brain damage. Her partner was arrested and is presently remanded in custody. It is likely that there will be criminal proceedings. CS received emergency treatment and was remained in that hospital receiving care and treatment. The prognosis was unclear; she remained agitated, restless, disruptive and extremely unsettled. She wandered, had assaulted staff and had suffered falls. She was suffering from post–traumatic amnesia and had no insight into her condition. Although it was predicted that she would emerge from this, there was no indication when this would happen.

At the time of the substantive hearing the application had become urgent because the time during which a surgical termination of pregnancy could be carried out was about to expire the following week. The Official Solicitor had accepted appointment to act as the litigation friend of CS and the court had the benefit of written medical reports from her treating clinicians, including a consultant psychiatrist and consultant obstetrician, and statements from a number of relatives and friends of CS. In addition the court heard oral evidence from her mother and sister.

The court had two issues to determine, first whether CS lacked capacity to make decision whether to undergo a termination of pregnancy and secondly, if so, what order should be made in her best interests. The Trust submitted that there was sufficient evidence upon which to make a final declaration in respect of capacity and that it was unlikely that she would regain capacity within the timeframe required. The Official Solicitor agreed. Having regard to all the evidence the Court had little trouble in arriving at the conclusion that CS lacked capacity to make the decision in question.

On the issue of best interests Baker J concluded that the evidence was overwhelming and all one way that CS was consistently expressing her wish to have a termination of pregnancy prior to the injury shortly before Christmas. He had particular regard to the statements supplied by her family and friends and the oral evidence provided by her mother and sister. She had also begun to take steps towards making an appointment and had acted in a way, which was entirely compatible

with that being her intention. In considering this evidence he also bore in mind that CS had previously had a termination of a pregnancy and was therefore aware of what was involved physically, emotionally and psychologically. Despite her fluctuating views since her injuries he took the view that little weight should be attached to those views because of her 'patent lack of capacity' and that the 'clear and unambiguous views that she expressed prior to the injury' were the 'crucial factors in this case'.

In the above circumstances the judge was satisfied that it was in CS's best interests to authorise the termination of pregnancy by surgery, because it accorded with her clear wishes prior to the injury and also with her overall health and welfare. He also made a declaration that it would be lawful for the Trust to use proportionate force for the purpose of restraining CS in the event that it became necessary.

Comment

In some respects, and despite the nature of the decision, this was not a difficult one for the court to take because the evidence of CS's views prior to her losing capacity was so very clear. It is however unusual in a medical treatment case for the Court to have available such clear evidence of a person's past wishes and feelings prior to the person losing capacity. She also lacked capacity to make any decisions at the time of the hearing because of the "manifest difficulties she has in understanding, retaining and weighing up information concerning the pregnancy and therefore little weight could be attached to any views she now expressed in this regard." Having a termination of pregnancy also accorded with her overall health and welfare interests. Her prior views therefore become the determining factor in deciding her 'best interests'.

Beverley Taylor

Anorexia and the CoP – the difficult line

Betsi Cadwaladr University Local Health Board v Miss W [2016] EWCOP 13 (Peter Jackson J)

Best interests – medical treatment – Mental Health Act 1983 – interface with MCA

Summary

The potential tragedy in this case is summed up in its final paragraph:

> *54. I know that W understandably considers that she has in some way failed. I certainly do not see it that way. To be faced with such a severe illness from such a young age is not a failure but a misfortune. W and her family now face a daunting future. They know that it will be a huge task for W to live in the community and that the chances of real change are unlikely, but they will be the last to lose hope. Unlikely things happen all the time and if any family deserves some good fortune it is this one. I earnestly hope that things go as well as they can for W, who has so many good qualities if her illness will only let her be.*

W was 28, weighed less than 30kg with a BMI of 12.6. She had spent around 10 of the last 17 years as a hospital inpatient combatting anorexia nervosa: *"the process of eating had become something almost sinful"*. Detained for 2½ years under section 3 of the Mental Health Act 1983, W did not want to die. She wanted to return to education, with a career path in mind, but: "*Currently I am struggling because I have no control over decisions in my life. I have no focus on things I would like in life that I am being denied…*". The most important thing for her was "*To make my own decisions and that treatment*

should not be enforced". She wanted to go home and felt she could "*turn it around*", managing on her own for the first time in her life but with a collaborative plan. She lacked capacity to make decisions about the care and treatment of her severe anorexia. But retained capacity to make decisions about her physical health.

Her responsible clinician "*confirmed that she would immediately discharge W from compulsory detention because, while her condition warrants treatment, they have found no way of treating it. If W is to stay on the ward, there needs to be a treatment plan and a goal. It is not otherwise possible for an acute bed to be held open*." The original proposal to re-feed under sedation was now off the table by consent. Peter Jackson J agreed with the unanimous professional view that using coercion to get W to eat was no longer appropriate. It was beyond the power of doctors, family members, and the court to improve her circumstances or to extend her life. And, "*The possibility that the withdrawal of inpatient mental health services will bring about a change for the better may not be very great, but in my judgment it is the least worst option from W's point of view*." The ward had "*become a place for talking about eating, and not for eating. If she is capable of making any progress, it will not be as an inpatient*." The treatment "*is not beneficial and it is therefore not right for it to continue*." His Lordship accordingly approved the Health Board's plan that W be discharged from the psychiatric unit into the community with a package of support for her and her family.

Comment

These proceedings are another example of clinicians and others exercising roles under the Mental Health Act 1983 using the Court of Protection to ratify their decisions, particularly where the patient's life is at risk (see also the *RC* case and also Ms X's case).

It is entirely understandable why ratification may be sought in some cases, and why the Court of Protection may appear to be the appropriate forum where questions of capacity are in play. However, these cases raise some potentially complex issues – and will do so for so long as there remains (in principle) two entirely separate regimes for the treatment of mental disorder and the treatment of physical disorder in respect of those who may lack the capacity to make the relevant decisions.

It is important to clarify the jurisdictional basis for the court's decision in the instant case. The decision to discharge W from detention was not one that W could make if she had capacity. That would have been a decision for her responsible clinician, hospital managers, nearest relative, or the tribunal. Furthermore, subject to certain exceptions, s.28 MCA 2005 prohibits the use of the MCA to give a patient, or to consent on their behalf to, medical treatment for mental disorder whilst they are subject to the psychiatric treatment powers contained in MHA Part 4.

In those circumstances, what, exactly, did the Court of Protection do in this case? It was prohibited from making a MCA s.16 decision on W's behalf in relation to her psychiatric treatment. But, on a strict reading, MCA s.28 does not prohibit the making of declarations under s.15 MCA either as to the person's capacity in the material domain(s) or as to the "*lawfulness or otherwise of any act done, or yet to be done, in relation to that person*."

The judgment itself refers to a treatment plan which was not appended to the judgment, and does not make clear what substantive relief was granted. We are therefore particularly grateful to

Andrew Bagchi QC (who acted for the applicant Trust) for clarifying that (a) the Court had a recital whereby it approved the treatment plan "*as being in W's best interests in the current clinical circumstances*" and (b) declared under MCA s.15 that "*It is in W's current best interests for the Board to provide treatment to W for her anorexia nervosa and its physical consequences in accordance with the treatment plan annexed hereto*".

We further understand from David Lock QC, who acted for the Official Solicitor, that although W was detained under the MHA 1983 at the time that the application was being considered by the Court of Protection, W's responsible clinician had made the decision that her detention was shortly to come to an end. Accordingly, the Court of Protection was only asked to make decisions about care and treatment for W after she was discharged from section. It follows that potentially tricky interface issues did not arise on the facts. However, the case does illustrate an important role for the Court of Protection in the context of care and treatment decisions post-MHA-detention which could include, for example, s.117 aftercare issues.

Litigation friend or foe?

NHS Trusts v C [2016] EWCOP 17 (Theis J)

Best interests – medical treatment – litigation friend

Summary

C was detained under s.2 of the Mental Health Act 1983 with bipolar affective disorder. She was in the late stages of pregnancy and suffering from a severe manic episode. This caused her to be unable to weigh the pros and cons of medical interventions that may be required during the dynamic situation of childbirth. She was unable to retain the relevant information long enough as she could only concentrate or engage with any one topic for up to 15 minutes before requiring a break. This also prevented her from understanding the whole of what was being explained (paras 38-39).

It was proposed that it was in C's best interests to have an elective caesarean under general anaesthetic. Labour was likely to be a very traumatic experience for her. C's reaction could be extreme, including physical resistance, that could pose a significant risk to her, her baby, and the staff caring for her. Moreover, continuous tracing of the baby's heart beat was required, which she was unlikely to tolerate.
Shortly before the hearing, C stated that she wished to have a natural birth in accordance with an earlier birth plan. She wished for minimal intervention, unless there was an emergency, in which case she would have an emergency caesarean if she had to. If that happened, she wanted to stay awake, would like the baby given to her immediately for as much skin to skin contact as possible, and for her birth partner to be with her.

In oral evidence, the Official Solicitor as C's litigation friend explored less interventionist procedures for the birth, after which he did not oppose the orders sought. The revised care plan was also agreed between all parties and the court determined that the elective caesarean was in C's best interests for the reasons given at para 58. She subsequently gave birth.

Comment

We mention this case as another clear example of the tension between P's wishes and feelings and

the position advocated on P's behalf. The current practice in the Court of Protection looks to the litigation friend not to represent P in any conventional sense but to instead identify and relay P's wishes and feelings, investigate and assess the available options, and present what the litigation friend considers to be in P's best interests. In this case, it was to agree to a treatment plan which contradicts P's position and not to oppose the application.

As a result, we would suggest, P's wishes and feelings are not being given full effect to by those representing – as opposed to those 're-presenting' – P. The history of the litigation friend is a long, tortuous and curious one and is in need of reform. For a more detailed analysis of the history and the current problems, see the article by Alex, Neil and Peter Bartlett: "Litigation friends or foes? Representation of 'P' before the Court of Protection" (2016) *Medical Law Review* (forthcoming).

DOLS in the House of Commons

In a short but pithy exchange on 22 March 2016, the Care Minister, Alastair Burt, indicated that he would look at any situation from Ann Coffey MP (who indicated that DOLS assessments were costing Stockport Council £1.2m/year) that might ease the situation "practically" as regards DOLS pending any amendments to the law following the Law Commission's current projects.

A further exchange is of note:

> *Mr David Nuttall (Bury North) (Con)*
>
> *Will the Minister confirm that when the new legislation is finally introduced, it will be simpler to understand and result in fewer bereaved relatives facing distressing delays when a loved one dies in care?*
>
> *Alistair Burt*
>
> *My hon. Friend is absolutely right. What has caused the confusion has been a definition of loss of liberty and dying in state detention that bears no relation to anyone's common-sense understanding of the situation. Whatever new legislation is proposed by the Law Commission, it must meet the test of being much simpler, but it must also meet the legislative test of meaning what it says so that it does not get disrupted in the courts again.*

The Law Commission should be publishing an interim report in mid-May. We will bring you the details as soon as Alex is allowed to share them.

Agency Lawyer position at the Official Solicitor's office

Although we do not usually operate as a recruitment agency, we make an exception in this case to let you know that a position has arisen for an agency lawyer in the Official Solicitor's office in the healthcare and welfare team. The agency position is being advertised via Capita Business Services, Lot number 14554.

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Conferences at which editors/contributors are speaking

CoPPA London seminar

Alex will be speaking at the CoPPA London seminar on 20 April on the recent (and prospective) changes to the COP rules. The seminar will also cover the transparency pilot. To book a place or to join COPPA, or the COPPA London mailing list, please email jackie.vanhinsbergh@nqpltd.com.

Scottish Paralegal Association

Adrian will be speaking at the SPA Conference on Adults with Incapacity on 21 April in Glasgow. For more details, see here.

ESCRC seminar series on safeguarding

Alex is a member of the core research team for an-ESRC funded seminar series entitled 'Safeguarding Adults and Legal Literacy,' investigating the impact of the Care Act. The second and third seminars in the series will be on "New" categories of abuse and neglect' (20 May) and 'Safeguarding and devolution – UK perspectives' (22 September). For more details, see here.

Adults with Incapacity

Adrian will be speaking on Adults with Incapacity at the Royal Faculty of Procurators in Glasgow private client half day conference on 18 May 2016. For more details, and to book, see here.

CoPPA South West launch event

CoPPA South West is holding a launch event on 19 May at Bevan Brittan in Bristol, at which HHJ Marston will be the keynote speaker, and Alex will also be speaking. For more details, see here.

Mental Health Lawyers Association 3rd Annual COP Conference

Charles J will be the keynote speaker, and Alex will be speaking at, the MHLA annual CoP conference on 24 June, in Manchester. 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.

Chambers Details

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 Newsletter in the future please contact 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, has numerous academic affiliations and is the creator of the website www.mentalcapacitylawandpolicy.org.uk. He is on secondment for 2016 to the Law Commission working on the replacement for DOLS. 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.

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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.

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