Mental Capacity Law Newsletter April 2016: Issue 64

Scotland

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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Capacity, facility and circumvention

In *Ritchie v Nelson* [2016] CSOH 35, decided on 4th March 2016, Lord Clarke granted decree of reduction of a Disposition in favour of the defender by an aunt of the pursuer (now deceased – "the deceased") of a house belonging to the deceased, on the grounds that the deceased "did not have the necessary capacity to grant the Disposition" [paragraph 88 of Lord Clarke's decision]. The pursuer, who was executrix-dative to the deceased, also pled facility and circumvention though "that case was, in the event, perhaps, less well developed" [2] and not accepted by Lord Clarke.

The case is of general interest as to the question which medical witnesses should address when giving an opinion as to capacity in such a case; the use of an affidavit where there was no apparent reason why the evidence of the person in question could not have been taken on commission; and Lord Clark's comments on the case based upon facility and circumvention. Also worthy of comment are two aspects not addressed, namely aspects relating to a power of attorney granted by the deceased, and circumstances surrounding the granting of the Disposition which might have warranted at least the possibility of a case based on undue influence.

For the purposes of this article, relevant persons were, in addition to the pursuer, the defender and the deceased; two medical witnesses called by the pursuer and one medical witness called by the defender; the family solicitor, now deceased, who prepared the Disposition ("the family solicitor"); and the witness who purportedly witnessed the Disposition ("the witness"). "the Disposition" is the Disposition which the pursuer sought to have reduced, and "the subjects" are the subjects purportedly conveyed by the Disposition.

Lord Clarke held that: "The primary issue for the court to determine in this action is whether or not, on the balance of probabilities the deceased, as at the date of the disposition, 2 July 2007, had the necessary legal capacity to grant that deed, the effect of which was to dispone, *inter* vivos, the only asset of hers of any significant value namely her home." [74]. It was accepted that as at October 2007 the deceased was suffering from advanced dementia, therefore: "The question therefore becomes more refined and it is whether, notwithstanding the accepted fact that the deceased was suffering from advanced dementia in October 2007, she, nevertheless, had the mental capacity, sufficient on 2 July 2007, for her to be considered as having been capable of fully comprehending the nature and effect of the granting by her of the disposition in question." [74].

Relevant dates include that in 1966 the subjects were acquired by the deceased and two siblings with special destination to the survivors and the survivor; those siblings died in 1992 and 1999 respectively; the deceased granted a power of attorney in favour of the defender on 30th September 2004; the Disposition was granted on 2nd July 2007; the deceased died aged 96 on 31st March 2011; and the pursuer was confirmed as executrix-dative to the deceased conform to an interlocutor dated 20th March 2012.

The medical evidence

Both of the pursuer's medical witnesses, whom Lord Clarke found to be credible and reliable, had submitted written reports providing opinions, "in no material respect … displaced in cross-examination", that on the balance of probabilities, the deceased would not have had

sufficient capacity on 2nd July 2007.

Lord Clarke quoted, with evident approval, the conclusion in the report by one of the pursuer's medical witnesses, which was in the following terms: "In summary following my review of the available evidence I believe it to be, on the balance of probability, highly unlikely that in July 2007 [the deceased] possessed the capacity to understand and/or recall complex financial decisions such as would be required to sign a deed transferring ownership of her house to her nephew." [28].

Lord Clarke was however critical of the approach of the defender's medical witness. He said: "It was apparent from the witness's report [i.e. the report of the defender's medical witness] and his evidence that he approached the request for an opinion from a standpoint he adopted when, for example, advising on guardianship cases. His starting point was, he said, always, in such situations, that there was a presumption that the individual who was being considered for guardianship had capacity, the task then being to identify whether or not there were any contra-indications. I observe at this stage that the court, however, in a contested litigation like the present has to decide the issue of capacity on the balance of probabilities. [The defender's medical witness] did not, it seems to me, address the issue in that way. His position was simply to say that he could not say what mental capacity, if any, the deceased had before she entered hospital." [57].

Lord Clarke also commented, after indicating that he found the evidence of the pursuer's medical witnesses persuasive, that he had "some difficulty" with the evidence of the defender's medical witness who "was, no doubt, doing his best to assist the court but, as has been noted, he approached matters on the basis that the pursuer had to overcome some presumption and was, as a consequence, desiderating a level and kind of evidence which he considered was necessary to rebut that presumption." [75].

The affidavit evidence

As already indicated, Lord Clarke was critical that the defender had submitted an affidavit by the family solicitor when it appears that the family solicitor's evidence could and should have been taken on commission. Lord Clarke was "unable to place any weight on the material contained in the affidavit for ultimately deciding the key issues in [dispute in] this case. The affidavit raises many questions which the court would have wished to have answered by [the family solicitor]. Fairness also would have required the opportunity to be given to the pursuer to have [the family solicitor] cross examined in relation to what was said in the affidavit as it clearly was highly germane to the issue in the case. No explanation, at all, has been given as to why his evidence was not taken on commission when it appears that he was alive for some time after the proceedings were raised."

Facility and circumvention

Lord Clarke considered that the pursuer's case on grounds of facility and circumvention was lacking in specification. On the evidence, facility at the material time was made out, but the pursuer had not "set out averments sufficiently specific in the circumstances to support the existence of circumvention, or that, in the event she has placed before the court sufficient evidence to support circumvention on the part of the defender or anyone else in this case." He was "not satisfied that they amount to establishing circumvention which is said to be a 'deceit or fraud'. There must be clear averment by which person or persons the deed is alleged to have been impetrated." He referred to *Baird v Harvey's Trustees* (1869) 20 D 1220, which in turn

referred to *Clunie v* Stirling (1854) 17 D pages 17 and 18. He also noted that: "There is a question as to whether the deceased could be said to have at least, strictly speaking, suffered lesion. In *McKay v* Campbell 1966 SCT 37 at 249 it was held that it must be averred that the party suffered lesion by granting the deed complained of. In my judgment the pursuer failed adequately to address this aspect of such a case." [89].

The power of attorney

Lord Clarke narrated that one of the pursuer's medical witnesses had, in her report, noted that there are "obviously concerns as to when this Power of Attorney was granted, as I think it is likely that [the deceased] would have been unable to give consent in the last year or so." [22]. Later in his Judgment he narrated and commented that: "On 30 September 2004 the deceased granted a power of attorney, 6/6 of process, which was registered with the Office of the Public Guardian. That might suggest, it was submitted, that at that time there was at least some concern as to the deceased's wellbeing and capacity to look after her own affairs." [64].

The family solicitor "stated that he had acted on behalf of the deceased in drawing up a continuing power of attorney in terms of which she appointed the defender and his brother Francis as her continuing attorneys in terms of section 15 of the Adults with Incapacity (Scotland) Act 2000. He had acted as a witness to the power of attorney which was executed on 30 September 2004." [15].

It is surprising that apparently no evidence was given to the court, and no submissions made to the court, as to the certification of the power of attorney, including as to who certified, whether indeed capacity and absence of undue influence or other vitiating factors was certified, and whether (and if so whom) the certifier had consulted for the purposes of certifying capacity.

Undue influence?

Towards the end of his Judgment, Lord Clarke commented that: "The whole circumstances surrounding its instruction and signing were driven, it seems, by the defender." [86]. The evidence indicated that there was no record in the family solicitor's file of any meeting between the family solicitor and the deceased regarding the Disposition. There were no file notes of instructions being taken from the deceased herself. No Terms of Business letter was issued to the deceased. There was no indication in the relevant papers of the client's identification. A copy of the duly registered Disposition was sent by the family solicitor to the defender, in which the family solicitor wrote: "I enclose copy of duly registered Disposition of the above property and I have placed this with the remaining Titles and enclose herewith my own Business Account in the matter for your attention". [16] There was no record of the Disposition, or any copy of it, being sent to the deceased herself.

The defender said in evidence that it took a matter of weeks for the Disposition to be prepared, and that there was further delay by the deceased after it had been delivered to her for signature. The business account was not addressed to anyone and was in fact paid by the defender with (he said) cash given to him by the deceased. The witness did not see the deceased on the day that he signed the Disposition as a witness. He stated that he did so in the defender's home. He understood that he was being asked to confirm that he had seen the document. The defender had in fact admitted in his pleadings that: "The witness was asked to witness the Disposition outwith the presence of the deceased. Admitted the witness did not see

the deceased sign the Disposition nor did she acknowledge her signature to him. Admitted the witness did not have the mandate of the deceased to sign." [67].

If these events had taken place after issue by the Law Society of Scotland of its vulnerable clients guidance, the circumstances narrated above might have attracted criticism by reference to that guidance. It is not clear from the Judgment why the pursuer did not seek to have the Disposition declared void on grounds of undue influence. Particularly in view of Lord Clarke's comments about the case on facility and circumvention, the pursuer might well have had stronger prospects of establishing undue influence than of establishing facility and circumvention. Compare the recent *Smyth* case (reported in our November 2014 Newsletter) in which incapacity, undue influence and facility and circumvention were all pled (albeit unsuccessfully).

Adrian D Ward

New Edinburgh Sheriff Court Practice Note

Sheriff Principal Mhairi M Stephen, who is Sheriff Principal of Lothian and Borders (and also President of the Sheriff Appeal Court), has issued Practice Note No 1, 2016, entitled "Applications under the Adults with Incapacity (Scotland) Act 2000". The Practice Note is dated 11th March 2016 and will apply to all applications lodged on or after 25th April 2016. This new Practice Note is available here. An electronic version may be obtained by email from the AWI mailbox at Edinburgh Sheriff Court at edinburghawi@scotcourts.gov.uk.

In the October 2015 Newsletter we reported on the issue by the Sheriff Principal of Glasgow and Strathkelvin of a Practice Note for applications under the 2000 Act. In that article we stated various criticisms of the Glasgow Practice Note. We are pleased to report that the new Edinburgh Practice Note is not open to similar criticisms.

The Edinburgh Practice Note is organised so as to cover separately applications and minutes under the 2000 Act (paragraph 2) and appeals to the sheriff under that Act (paragraph 3). The first of these seems to be focused principally upon applications under Part 6 of the Act, and does not explicitly address applications under section 3(3) or the two types of variation covered by section 74. However, it does carefully address the principal omissions in the Glasgow Practice Note. For example, paragraphs 2(k) and 3(g) both require averments as to the present and past wishes and feelings of the adult insofar as they can be ascertained. Alternatively, if it has not been possible to ascertain them, the writ must explain why and set out the steps taken, if any, to ascertain, including setting out any assistance or support which has been provided.

There have at times been difficulties where courts have criticised averments along the lines that "the applicant states that", on the basis that the solicitor preparing the application should be in a position to offer to prove the averments. The Practice Note helpfully obviates some of these difficulties by requiring that a proposed guardian, substitute guardian or intervener should provide a letter specifying whether he or she has at any time been formally barred from working with vulnerable adults, or convicted of a criminal offence in Scotland or elsewhere.

The other requirements of the Practice Note largely follow the requirements of the 2000 Act itself and relevant court rules, and practitioners in other sheriffdoms may find it helpful to refer to it as a checklist. As ever, any such checklist can only be a starting-point: the particular

circumstances of an individual application, or the precise nature of any orders sought, may well generate their own further requirements, or adjustments to requirements in the Practice Note.

The Edinburgh court would no doubt regard it as good practice that where for good reason there are any significant departures from the requirements of the Practice Note, the sheriff clerk's attention should be drawn to these when an application or appeal is submitted, and the solicitor who has submitted it should be ready to address the sheriff on such points.

Adrian D Ward

Application by J, solicitor, in respect of the adult F

The Edinburgh Sheriff Court issued a judgment on 22nd March 2016 in this case ((2016) SC Edin 24)). It involved an application under the Adults with Incapacity (Scotland) Act 2000 by a solicitor seeking the appointment of a financial guardian for F, an 87 year old adult. The pursuer claimed that she had an interest in the property and financial affairs of F by virtue of the fact that she had acted as F's solicitor for approximately a year before F lost capacity thus entitling her to apply for the guardianship (under section 57(1) of the 2000 Act).

Section 57(1) of the 2000 Act permits an application for guardianship to be made by "…by any person (including the adult himself) claiming an interest in the property, financial affairs or personal welfare of an adult…"

It appears from the judgment that this was interpreted by the sheriff as the pursuer "claiming to have an interest" which in his view meant that the pursuer would have to successfully assert that she had both title and interest to be granted guardianship[1] and to do so would mean she would have had to demonstrate a patrimonial interest[2]. On this basis, the sheriff determined that the pursuer did not have a sufficient interest entitling her to bring the application, and that the pursuer was not therefore a person claiming an interest.

The sheriff's interpretation is interesting given that the 2000 Act makes a distinction between 'claiming an interest' and 'having an interest'. The 2000 Act requires only that "the pursuer claims an interest" and was designed to allow solicitors in certain situations to go beyond their duty to advise and suggest in the event of an adult's incapacity and actually apply for guardianship[3] as a protective measure for the adult[4].

Clearly this judgment raises some important legal and practice related issues and accompanying confusion. It is understood that the decision is to be appealed and the outcome will be eagerly awaited for any authoritative guidance it provides.

Jill Stavert

[1] On the basis of Macphail, *Sheriff Court Practice (3rd edition)* at paras 4.29 and 4.33, quoted at para 7 of this judgment.
[2] At paras 12-13.
[3] See A W Ward, *Adult Incapacity*, W Green, 2003, pp23-24 and para 14.59 (quoted at para 6 of this judgment although no mention is made of discussion in para 14.59 of *Adult Incapacity* about the distinction between 'claiming an interest' and 'having an interest').
[4] See again, Ward, p 14.59 and also Scottish Law Commission, *Report on Incapable Adults*, Scot Law Com No 151), 1995, para 2.37-2.38 and the 2000 Act's *Code of Practice for persons authorised under intervention orders and guardians*, 2011, para 4.3.

Major Change Ahead – Scottish Government Consultation Closes

As we reminded readers last month, the period for responses to the Scottish Government Consultation on the Adults with Incapacity (Scotland) Act 2000 ended on 31st March 2016. Scottish Government has not yet published the responses to consultation, but three are already in the public domain: from the Mental Welfare Commission for Scotland, the Public Guardian (Scotland) and The Law Society of Scotland. Each of these is a major document, responding carefully to the proposals in the Scottish Law Commission report on Adults with Incapacity but also containing a wide review of the whole relevant area of law, and tabling proposals for wide ranging reform.

At this stage it would be premature to attempt to assess in any detail the changes to be expected as a result of this consultation process. This will in any event be a matter upon the agenda of the Scottish Government which will be in power following next month's elections.

On the particular issues regarding compliance with article 5 of the European Convention on Human Rights in relation to people deemed to be deprived of their liberty, the general flavour of the responses received so far indicates that further work will be required upon the proposals, on the one hand to ensure compliance with the requirement for regular judicial review, and on the other to integrate any such procedures more efficiently with the wider range or procedures which already exist. On topics for wider review, a few selective quotations will give a picture of the general thrust of the responses so far made public.

From the Mental Welfare Commission for Scotland:

> *Particularly in the light of the UN Convention on the Rights of Persons with Disabilities, we believe the starting point should not be to try to protect services from any possible legal challenge. It should be to devise a system which empowers people in care settings, and protects them where necessary. It should focus not simply on capacity as a legal concept, but powerlessness as a lived experience.*
>
> […]
>
> *We propose a system of graded welfare guardianship, the general features of which we outline below. The Public Guardian has previously proposed a similar graded approach to financial guardianship, and we believe these approaches can be combined…*
>
> […]
>
> *Level 1: Registered supporter . . . This would be a mechanism to recognise formally a person who supports the adult in decision-making. It would give effect to the concept of supported decision making, as called for by the UN Convention on the Rights of Disabled Persons. It also reflects the fact that many carers and family members still feel excluded and disempowered in dealings with services. Health and care services and other bodies such as banks may refuse to share information with or seek input from those who, in practice, support the adult in day to day living. The lack of formal status raises problems in relation to obligations of confidentiality. In our experience, it is this fear of lack of involvement which drives many families to seek guardianship, rather than a wish to control every decision of the adult.*

From the Public Guardian:

The Public Guardian submitted a report to the Scottish Government in November 2011, entitled 'Early Deliberation of Graded Guardianship'; this Report expressed serious concerns about the viability of the current guardianship regime as a result, inter alia, from increasing demands on mental health officers. The position has become ever more critical with reducing numbers of practitioners and increasing numbers of applications (as well as increasing demands on these same practitioners from other business). The suggestion that these same professionals will have a formal role in respect of significant restriction statements / applications will further pressure an already strained service. The process of applying for guardianship has become progressively more protracted, for a number of reasons but amongst these is the increasing difficulty and thus time taken to obtain the necessary mental health officer report; any new process which places even more demands on mental health officers risks the viability of the overall guardianship process and has to be of major concern and given very serious consideration.

15 years of experience with the 2000 Act has demonstrated that fundamentally it is fit for purpose but there are serious concerns about the ongoing ability to meet this purpose unless there is some modification and modernisation. We must take this opportunity to review the 2000 Act, re-engineer those sections that need updating and so ensure we have as robust and as enviable a statute to support our incapable citizens over the next decades of the 21st century.

From the Law Society of Scotland:

The Society … welcomes the encouragement which it has received… to suggest ways in which the combined jurisdictions in relation to adults with incapacity, adults in need of compulsory mental health care and treatment, and adults who are vulnerable and at risk, are addressed in terms of the commendable and pioneering body of legislation introduced by the Scottish Parliament in 2000, 2003 and 2007 (and in amending legislation); and how what are at present separate jurisdictions are being operated in practice. … As a matter of urgency Scotland must improve the efficiency and effectiveness of the operation of the combined jurisdictions. In particular, the current position under the Adults with Incapacity (Scotland) Act 2000 ("the 2000 Act") is inefficient and ineffective. The fragmented operation of the three jurisdictions is inefficient because of the waste of public resources in terms of the current operation, in particular of the AWI jurisdiction by the courts and the drain on Legal Aid funds. The operation of the AWI jurisdiction is also expensive for litigants meeting their own costs, and time consuming and stressful for many of those involved in its procedures. This situation does not use the available resources of the Office of the Public Guardian and others with statutory roles to best effect. Most seriously of all, from the perspective of the Society in relation to its responsibility for the public interest, the current fragmented operation of the three jurisdictions and the current operation of the AWI jurisdiction in particular, frequently and seriously lets down vulnerable people, their families and carers. … In consequence of these concerns, we urge that early steps be taken to move to implementation of the "one door" approach unanimously favoured by all stakeholders and interest-groups in the 1990s during the processes of consultation and discussion which led to the 2000 Act.

The 51-page response from the Law Society of Scotland draws upon the range of specialist expertise available within the Society's Mental Health and Disability Sub-Committee to provide separate sections identifying areas for review of

the Mental Health (Care and Treatment)(Scotland) Act 2003 and the Adult Support and Protection (Scotland) Act 2007, as well as a full section by section review of the Adults with Incapacity (Scotland) Act 2000. The Society's response develops specific proposals, with reasons, for achieving the "one door jurisdiction" referred to in the quotation above. It addresses as separate topics the under-provision of Mental Health Officers, the requirements for compliance with the United Nations Convention on the Rights of Persons with Disabilities, matters originally proposed by the Scottish Law Commission in 1995 but omitted from the 2000 Act, and matters requiring coordinated action by both the UK and Scottish Parliaments.

Adrian D Ward

Experts in the courts

In addition to the comment upon the *Ritchie* case above, interested readers are also directed to the comment on *Kennedy v Cordia (Services) LLP* in the Practice and Procedure Newsletter, a Supreme Court case concerning Scotland which has general application for the role of experts.

Learning Disability and Parenting

At the end of March 2016 the European Court of Human Rights issued an important ruling in *Kocherov and Sergeyeva v Russia* (Application no. 16899/13 judgment of 29 March 2016) firmly rejecting blanket assumptions that a person with a diagnosis of learning disability is incapable of caring for their children. Indeed, to make such an assumption may well result in a violation of that person's Article 8 ECHR right (the right to respect for private and family life).

A reading of the full judgment is highly recommended – and the author intends to return in more detail to this ruling in the future – but a summary of the judgment follows.

The applicants were a father (first applicant) and daughter (second applicant). The father has a mild learning disability and lived in a care home between 1983 and 2012. In 2007 he married Ms NS, who was resident in the same care home, and who had been deprived of her legal capacity because of her mental disability. In the same year, she gave birth to their daughter who was placed in a children's home. The first applicant subsequently consented to their daughter remaining there until it became possible for him to take care of her. Meanwhile he maintained regular contact with her, visiting her at the children's home, spending time with her and buying her books, toys and clothes.

In 2008 the marriage between the first applicant and Ms NS was declared void at the request of a public prosecutor because of Ms N.S.'s legal incapacity. However, her legal capacity was subsequently restored and they have since remarried.

In 2012 the first applicant moved out of the home into social housing and wanted his daughter to live with him there. It appears that he had set up an environment conducive to caring for his daughter and had proactively made enquiries about schooling for her. Ms NS also had regular contact with her daughter and visited the first applicant's flat. However, the authorities resisted, and this was upheld by the courts, until May 2013 when the second applicant was at last permitted to join her father.

The first applicant argued that the refusal to allow his daughter to live with him was a violation of his right under Article 8(1) ECHR. The state

argued that their actions were justified under Article 8(2) ECHR as lawful and in pursuit of a legitimate aim (protecting the child from harm). International Disability Alliance, the European Disability Forum, Inclusion International and Inclusion Europe intervened in the proceedings as third parties and submitted that the first applicant's right under Article 8 in conjunction with Article 14 (non-discrimination) ECHR had been violated. The Court, by a majority, agreed that there had been a violation of Article 8 ECHR and as such felt that there was no need to also consider Article 14.

The authorities essentially asserted that the first applicant's diagnosis of learning disability meant that he was unable to care for his daughter. Much turned on the conflicting evidence provided by the state and by the first applicant. Whilst there is no suggestion in the judgment that the first applicant lacked capacity at the material times the national courts also appear to have been much influenced by the fact that Ms NS, who was not a party to the proceedings, had been deprived of her legal capacity and concerns about her involvement with her daughter and the risk this posed. Restoration of her legal capacity seemed to be a pivotal factor in them finally relenting and allowing the daughter to live with her father.

The Court[5], whilst it acknowledged the paramountcy of the child's best interests[6] and need to have regard to any actual and potential risks involved, found that the evidence produced suggested that the first applicant was capable of adequately and appropriately caring for his daughter[7]. Significantly, it also made it clear that to align the refusal to allow the child to live with her father primarily on the basis of his diagnosis was not a "sufficient" reason to justify a restriction of his parental authority[8]. Nor was it convinced that the national courts' reference to Ms NS's legal status was a sufficient ground for restricting the first applicant's parental authority[9].

What is, however, interesting about the ruling is that whilst Articles 5 (equality and non-discrimination) and 23 (respect for home and family) of the UN Convention on the Rights of Persons with Disabilities (UNCRPD) are referred to as relevant international law there is no mention of Article 12 (equal recognition before the law). This is surprising given the apparent relevance of this particular right to this case and its interpretation by the UN Committee on the Rights of Persons with Disabilities in its General Comment No 1[10] and now considerable literature surrounding it. It is difficult to know whether this illustrates a lack of appreciation of the requirements of the UNCRPD, especially the foundational right identified in Article 12, or whether it simply did not want to address the complicated issues raised in the general comment.

Jill Stavert

[5] Judge Keller dissenting.
[6] Indeed, Articles 3 and 9 of the UN Convention on the Rights of the Child were cited as relevant international law.
[7] Paras 101-108 and 118-119.
[8] Paras 109-112.
[9] Paras 113-117.
[10] Committee on the Rights of Persons with Disabilities, General Comment No. 1(2014): *Article 12: Equal recognition before the Law,* adopted 11 April 2014.

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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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THE QUEEN'S AWARDS FOR ENTERPRISE INTERNATIONAL TRADE 2013

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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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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.

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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.

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.

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.

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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.

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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.