Mental Capacity Law Newsletter December 2016: Issue 71

Essex CHAMBERS

Court of Protection: Practice and Procedure

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

(1) In the Health, Welfare and Deprivation of Liberty Newsletter: DOLS and objections, the scope of s.21A appeals and best interests in treatment withdrawal;

(2) In the Property and Affairs Newsletter: capacity to revoke an LPA, capacity and IVAs, and litigation friends, influence and trusts;

(3) In the Practice and Procedure Newsletter: the Court of Appeal looks at committal, dismissing vs withdrawing proceedings, and the acceptable limits in criticising witnesses;

(4) In the Capacity outside the COP Newsletter: news from the National Mental Capacity Forum, new consent guidelines for anaesthetists, an important Serious Case Review regarding self-neglect, an update on the international protection of vulnerable adults and a Christmas book corner;

(5) In the Scotland Newsletter: delegation by attorneys and getting it backwards as regards capability to stand trial.

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 will be back in early February, and wish you all a very happy holidays in the interim.

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Alex Ruck Keene
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Anna Bicarregui
Simon Edwards (P&A)

Guest contributor
Beverley Taylor

Scottish contributors
Adrian Ward
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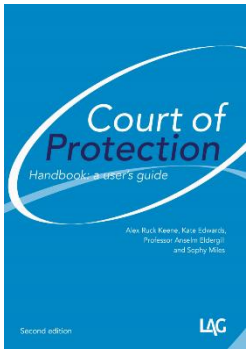
Court of Protection Handbook 2nd edition



Alex, exploiting shamelessly his position as editor, is very pleased to announce that the entirely updated second edition of the Court of Protection Handbook is now available from the LAG bookstore. The new edition has been rewritten to take account of the amendments made by the Court of Protection (Amendment) Rules 2015, the Case Management Pilot that started in September 2016 and the Transparency Pilot that started in January 2016, along with coverage of the Re X procedure for judicial authorisation of deprivation of liberty. It also includes new practical guidance for improving the participation of P.

The website has also been thoroughly updated to include a whole new suite of – free – downloadable precedent orders (including those used by the judiciary in the Case Management Pilot). As ever, feedback is very welcome, to alex.ruckkeene@39essex.com.

When to commit

Devon CC v Kirk [2016] EWCA Civ 1221 (Court of Appeal) (Sir James Munby P, Black and McFarlane LJJ)

COP Jurisdiction and powers – contempt

Summary

In September 2014 Devon County Council commenced proceedings in the CoP under the MCA 2005 with respect to MM, a man in his eighties who, it is agreed, suffers from dementia and lacks the mental capacity to make decisions about his own care and welfare. In 2013 MM signed a Power of Attorney appointing Mrs Kirk together with another individual as attorneys both for health and welfare and for property and affairs, under the MCA 2005. At the time the CoP proceedings were commenced, MM had been moved by Mrs Kirk from his longstanding home in Devon to live with her in another part of England. Although MM has lived in England for very many years, he was, by birth, Portuguese, and originated from the island of Madeira, where some of his family members still live. Within the CoP proceedings a report was commissioned from an independent social worker on the question of MM's future care and, in particular, whether it was in his interests to remain living with Mrs Kirk, or to return, albeit to a care home, in his home area in Devon where he had lived for the previous fifty years and where he had developed and maintained a large circle of friends. The independent social work report was produced on 20th April 2015. It recommended a return to Devon. Within days Mrs Kirk removed MM from the jurisdiction of England and Wales, without any notice to the professionals in the case, and travelled with him to Portugal. MM had remained in Portugal since that time. Shortly after arrival he took up residence in a care home where he remained. Mrs Kirk subsequently returned to her home in England without him.

During the ensuing eighteen months various High Court Judges, sitting in the CoP, made orders designed to achieve the return of MM to England so that he might be placed in a care home in Devon. It appeared that the care home in Portugal will not release MM from their care without an express authority to do so from Mrs Kirk. The CoP orders were therefore directed at Mrs Kirk so as to require her to take such steps as

were necessary to achieve MM's return to this jurisdiction and, in later order, specifically directing her to sign the appropriate paperwork authorising the care home in Portugal to release him. She did not do so, even following a fully contested welfare hearing before Baker J in which he found that it was in his best interests to be returned to Devon, and contempt proceedings were issued against her.

Between the contempt proceedings being issued and being heard before Newton J, Mrs Kirk, acting as a litigant in person, had issued a notice of appeal in the Court of Appeal against the decision of Baker J, although she did not ask for a stay of Baker J's order.

It was common ground before Newton J that Mrs Kirk had failed to comply with the order. Indeed, in the face of the court, she continued to refuse to sign the form of authority before Newton J at the hearing. He therefore had no option but to find contempt of court proved. As regards disposal, he noted that the options were limited, Mrs Kirk having little income and no assets; he therefore "*reluctantly concluded that there now being no other way, it seems to me, of enforcing the court order; that I am left with no alternative but to pass a sentence of imprisonment, however much I have made it perfectly clear that I do not wish to do so*." He sentenced her to six months' imprisonment, but gave her one last chance to sign the order within seven days. She did not do so, and was imprisoned.

Her case came before the Court of Appeal which expressed its disquiet at what had happened. As McFarlane LJ noted:

> *27. I am bound to record that I find the circumstances of this case to be of significant concern. The Court of Protection has sentenced a 71-year-old lady to prison in circumstances where the lady concerned is said to be of previous good character and where, as the judge acknowledged, she has been acting on the basis of deeply held, sincere beliefs as to the best interests of MM for whose welfare she is, as the judge found, genuinely concerned. The ultimate purpose of her incarceration is to achieve the removal of an 81-year-old gentleman, who has suffered from dementia for a number of years, from a care home in one country to a care home in Devon which is near his longstanding home and within a community where he is well known. Those stark facts, to my mind, plainly raise the question of whether the COP was justified, on the basis that it was in MM's best interests to do so, in making an order which placed Mrs Kirk in jeopardy of a prison sentence unless she complied with it. That aspect of the case, however, is a matter which goes to Mrs Kirk's application for permission to appeal the original order, to which I will turn in due course.*

McFarlane LJ (with whom the other members of the Court of Appeal agreed) found that Newton J had been wrong to determine the committal application in circumstances where she was seeking permission to appeal the order of Baker J.

He then granted permission to Mrs Kirk to appeal the order of Baker J on the basis that, whilst her simple disagreement with Baker J's conclusions did could not found an appeal:

> *33. Where Mrs Kirk may have an arguable appeal is in relation to the order that followed on from the overall welfare determination insofar as it made her subject to mandatory orders to sign documents which were backed up by a penal notice and an express warning of potential committal proceedings. It is certainly possible to argue that any determination of MM's welfare should have included consideration of how any move from*

> *Portugal to Devon could be achieved. Where, as was apparently taken to be the case before Baker J, it is said that the move could only be secured by placing Mrs Kirk under threat of the sanction of imprisonment, it is arguable that the very question of whether Mrs Kirk should be put in that position and face the prospect of a prison sentence for non-compliance should have been addressed by the COP in the context of MM's welfare. In short terms, that question might be 'is the move to Devon still in MM's best interests if it may only be achieved by sending to prison someone whose interests he could be expected to have at heart, had he the capacity?'*
>
> *34. In addition, during the course of the oral hearing before this court, the issue of what alternative means there may have been to achieve MM's repatriation without having to require Mrs Kirk's signature was raised but not satisfactorily answered.*
>
> *35. Neither of the above points were seemingly addressed by Baker J in the main welfare judgment which has now been transcribed. It is not clear whether the judge gave a short further judgment on the question of whether or not Mrs Kirk should be compelled, on pain of committal, to sign the documents or whether there was any other alternative method of achieving MM's move to Devon without directly involving Mrs Kirk. A transcript of any further judgment, if given, must now be obtained.*

Sir James Munby P also noted – and deplored – the difficulties encountered by Mrs Kirk's legal representatives in gaining access to her in prison.

Comment

The point identified by McFarlane LJ in granting Mrs Kirk permission to appeal the decision of Baker J is a very significant one. Albeit that the situation before the court was more extreme than some (in that P had been taken out of the country) the situation where it would only be possible to compel obedience with a welfare order by taking draconian steps against a family member/friend is far from uncommon, and poses particular difficulty where (as here) there are grounds to consider that P themselves may well not wish such steps to be taken. We will therefore watch carefully for, and report upon, the full appeal judgment in due course.

Dismissing or withdrawing?

A Local Authority v X (2) [2016] EWCOP 50 (Holman J)

COP Jurisdiction and powers – interface with public law proceedings

Summary

In the sequel to the case that we reported in our last Newsletter, concerning whether the Court of Protection should embark upon a full capacity determination in respect of Mr X in circumstances where the funding local authority had indicated that it simply could not meet the costs of his care within his own home, matters took a slightly unexpected turn.

First, it turned out that, in fact (and unsurprisingly given the level of his needs), Mr X's funding would be more likely to be an NHS than a local authority responsibility.

Second, a further report from the independent psychiatrist concluded that, in fact, Mr X did have capacity to make decisions upon his residence and care. This was in line with the report from his consultant psychiatrist to the same effect.

The local authority sought permission (under Rule 87A of the COPR, introduced with effect from July 2015) to withdraw proceedings as it was no longer the relevant funding body; alternatively, they sought that, if the CCG wished to reinstate the proceedings, the local authority should be allowed to withdraw from the proceedings. The Official Solicitor's position was that the evidence in relation to capacity was now so clear that the court should formally make a declaration to this effect under s.15(1)(a), which would have the effect of bringing the proceedings to an end. The local authority argued that their application under Rule 87A should be determined first, both because it had been lodge first, and as a matter of logic.

Holman J held as follows:

> *"My view on these competing arguments is as follows. I am faced today with applications that I should exercise discretions arising both under section 15 of the Act and rule 87A of the rules. I do not accept that I need, chronologically or logically, to exercise my discretion under rule 87A before giving any consideration to the discretion under section 15 of the Act itself. Both these applications are currently before the court at a single hearing, and it seems to me that I should give composite consideration to my exercise of the discretions under them. I accept the submission of Ms. Dolan* [on behalf of the Official Solicitor] *that when there is clear evidence from two consultant psychiatrists, who formerly both considered that a patient lacked capacity but now consider that he does have capacity, the court must be very cautious about improperly leaving the proceedings in being. The existing jurisdictional foundation for these proceedings is the earlier interim orders that the patient lacks capacity, which themselves subsisted on the basis of the earlier opinions of both Dr Isaac and the treating psychiatrist. Those psychiatrists having now changed their opinions, I could not leave those interim declarations in place. In the absence of an interim declaration, the presumption of capacity under the Act would, in any event, revive. But it does go further than that. The clear opinion of these two consultant psychiatrists, both of whom have now known this patient over a period of time, is to the effect that he does have capacity with regard to his residence and care.*

Holman J considered that the evidence was "*currently all one way. It is to the effect that a patient, who was previously considered to lack capacity, does now have capacity. I agree with Ms. Dolan that, at any rate on the facts and in the circumstances of this case, that conclusion should be clearly and formally expressed by a declaration made under section 15. It is true that the written evidence of the two psychiatrists has not been 'tested' by cross-examination by or on behalf of the local authority but, as I have said, they do not have any positive evidence to the contrary*." He therefore made a declaration to that effect under s.15(1)(a) and did not grant permission to the local authority to withdraw proceedings which had ceased to have effect at the moment he made that declaration.

Comment

This is of some interest as the first reported judgment to consider the new Rule 87A. What we look forward to in due course is a case which the court in determining that application confirms that it is making a case management decision, rather than a decision for or on behalf of P (such that it is not therefore bound to act in P's best interests). We suggest that, by analogy with the position under the FPR, it is a case management decision, albeit one taken with P's interests squarely in mind: see *Re W (Care Proceedings: Functions of Court and Local*

Authority) [2013] EWCA Civ 1227. On the facts of the instant case, that issue did not fall for determination, and Holman J was plainly right to determine the greater – whether P had capacity – before determining the lesser – whether proceedings should be withdrawn – so as to put to matter further questions about his capacity beyond question.

As to the much bigger issue lurking behind the original *Re X* case – what the CoP should do in the face of an assertion by a public body that only one option is available – judgment was reserved following a day and a half hearing before an impressively interventionist Supreme Court in *Re MN*.

Criticising witnesses – the limits

Re W (A child) [2016] EWCA Civ 1140 (Court of Appeal) (Sir James Munby P, McFarlane and Clarke LJJ)

COP Jurisdiction and powers – experts

Summary

The central issue in this appeal, of relevance by analogy to proceedings before the Court of Protection was this:

> *Can a witness in Family proceedings, who is the subject of adverse judicial findings and criticism, and who asserts that the process in the lower court was so unfair as to amount to a breach of his/her rights to a personal and private life under ECHR Art 8, challenge the judge's findings on appeal?*
>
> *If so, on what basis and, if a breach of Article 8 is found, what is the appropriate remedy?*

This shortly stated issue gave rise to a number of procedural and substantive legal issues, described by Lord Justice McFarlane (who gave the sole judgment) as a series of landmines, the detonation of any one of which would be likely to prevent the appellants from reaching their goal.

The issue arose as part of care proceedings in which there had been a fact finding by a judge as to whether a child (C) had been sexually abuse by members of her family. The judge found that there had not been any sexual abuse. That conclusion was not challenged on appeal. The judge also made subsidiary findings that a social worker (SW) and a police officer (PO) together with other professionals and the foster carer, were involved in a joint enterprise to obtain evidence to prove the sexual abuse allegations irrespective of any underlying truth and irrespective of the relevant professional guidelines. The judge found that SW was the principal instigator of this joint enterprise and that SW had drawn in the other professionals. The judge found that both SW and PO had lied to the court with respect to an important aspect of the child sexual abuse investigation. The judge found that the local authority and the police generally, but SW and PO in particular, had subjected C to a high level of emotional abuse over a sustained period as a result of their professional interaction with her. In addition to the specific adverse findings made against the local authority, SW and PO also complained that there was no justification for the judge deploying the strong adjectives that he used in describing the scale of his findings in a judgment which, in due course, in its final form, would be made public. The judge proposed to name SW and PO in the judgment.

The local authority, SW and PO sought to appeal in order to have certain parts of the judgment excised before it was made public. The argument they made was procedural – they stated that the first time they had known that the judge was

going to make such serious findings about their conduct was when he gave an oral bullet point judgment and that they had not been given any opportunity to address the issues during the hearing. McFarlane LJ notes that on review of the transcripts of the hearing it was apparent that the cross-examination of SW and PO had not raised any of the issues which the judge later included in his judgment.

The main procedural and substantive legal hurdles were:

- Were SW and PO entitled to appeal against the judgment at all, not being original 'parties' and not seeking to appeal the central 'decision of the court' (namely the finding that there had not been any sexual abuse)? (See section 31K of the Matrimonial and Family Proceedings Act 1984)?

- If they were able to appeal, were SW and PO afforded the protection of Article 8 in these circumstances and if so were those rights breached by the lower court?

- Was the local authority (which as a body corporate was not entitled to rely on Article 8) entitled to argue that the lower court had breached Article 6?

- What remedy applied if the relevant breaches were made out?

Parties?

The judgment sets out a detailed analysis of the definitions of a party and an intervenor which are not replicated here. SW and PO were witnesses at the fact finding but once the judge's adverse findings were made as part of the oral bullet point judgment, they sought and were granted the chance to be represented and make submissions. It was argued on their behalf that this gave them the status of parties or intervenors.

The Court of Appeal held that on the facts of this case both SW and PO achieved "intervenor" status, and were therefore additional 'parties' to the proceedings relating to the terms of the judgment.

It was further held that due to the clear ruling of the Court of Appeal in *MA Holdings Ltd* [2008] EWCA Civ 12, it was unnecessary to establish with certainty the precise procedural status of SW and PO in the lower court in order to determine whether or not they could act as "appellants" in the Court of Appeal.

Finally where it was established that an individual's rights under ECHR, Art 8 had been breached by the outcome of the proceedings in the lower court, then the Court of Appeal had a duty under s.3 HRA 1998 to afford that individual a right of appeal.

A decision/determination/order/judgment?

The appellants were seeking to challenge subsidiary internal findings of the judge and not any order made, which on its face would serve as a bar to any appeal (appeals normally lying against an order).

The judgment analyses this issue in detail, considering the case of *Cie Noga SA v Australia and New Zealand Banking Group* [2002] EWCA Civ 1142; [2003] 1 WLR 307 (the leading authority on the distinction to be drawn between those aspects of a lower court's conclusions which are properly susceptible to appeal, and those which are not). The Court of Appeal concluded that as the ECHR was not engaged on the facts of *Cie*

Noga it was not necessary to follow the approach of the court in that case.

The Court of Appeal concluded that the judge's findings themselves were a 'judicial act' which, on the facts of the case, were capable of being held to be 'unlawful' under HRA 1998, s 7(1) and therefore the proper subject of an appeal, without having to consider whether or not they were a 'decision', 'determination', 'order' or 'judgment'.

Did SW and PO enjoy protection with respect to Art 8 private life rights and were those rights breached?

McFarlane LJ's answers were "yes and yes." The judgment contains a detailed consideration of the scope of Article 8 and makes clear that it encompasses an individual's right to engage in a particular profession. The case provides a summary as follows:

(a) In principle, the right to respect for private life, as established by Art 8, can extend to the professional lives of SW and PO (*R (Wright) v Secretary of State for Health and R (L) v Commissioner of Police for the Metropolis*);

(b) Art 8 private life rights include procedural rights to fair process in addition to the protection of substantive rights (*Turek v Slovakia* and *R (Tabbakh) v Staffordshire and West Midlands Probation Trust*);

(c) The requirement of a fair process under Art 8 is of like manner to, if not on all-fours with, the entitlement to fairness under the common law (*R (Tabbakh)* referring to Lord Mustill in *R v Secretary of State for the Home Department, Ex Pte Doody*);

(d) At its core, fairness requires the individual who would be affected by a decision to have the right to know of and address the matters that might be held against him before the decision-maker makes his decision (*R v Secretary of State for the Home Department, Ex Pte Hickey (No 2)*);

(e) On the facts of this case protection under Art 8 did extend to the 'private life' of both SW and PO (see the full facts of the case but with relevant facts in particular being that SW had been suspended and it would impact on PO's ability to give evidence and be involved in similar matters);

(f) The process, insofar as it related to the matters of adverse criticism that the judge came to make against SW and PO, was manifestly unfair to a degree which wholly failed to meet the basic requirements of fairness established under Art 8 and/or common law. In short, the case that the judge came to find proved against SW and PO fell entirely outside the issues that were properly before the court in the proceedings and had been fairly litigated during the extensive hearing, the matters of potential adverse criticism had not been mentioned at all during the hearing by any party or by the judge, they had certainly never been 'put' to SW or PO and the judge did not raise them even after the evidence had closed and he was hearing submissions.

Useful guidance was given to judges conducting cases where adverse findings were likely to be made:

(a) Ensure that the case in support of such adverse findings is adequately 'put' to the relevant witness(es), if necessary by recalling them to give further evidence;

(b) Prior to the case being put in cross-examination, provide disclosure of relevant court documents or other material to the witness and allow sufficient time for the witness to reflect on the material;

(c) Investigate the need for, and if there is a need the provision of, adequate legal advice, support in court and/or representation for the witness.

In the present case, once the judge had formed the view that significant adverse findings might well be made and that these were outside the case as it had been put to the witnesses, he should have alerted the parties to the situation and canvassed submissions on the appropriate way to proceed. One option at that stage, of course, was for the judge to draw back from making the extraneous findings. But if, after due consideration, it remained a real possibility that adverse findings may be made, then the judge should have established a process that met the requirements listed above.

Local authority: breach of fair trial rights

Given the firm and clear view that the court took as to the degree to which the process adopted fell short of the standard of fairness to which those affected were entitled, it was unnecessary to do more than record that the same conclusion, in the context of Art 6 and the common law, must apply with respect to the adverse findings made against the local authority which had not been canvassed during the hearing and were outside the issues in the case.

Remedy

It was incumbent on the court to provide a remedy and, so far as may be possible, to correct the effect of the unfairness that had occurred. In the present case what was sought was the removal from the judgment of any reference to the matters that were found by the judge against SW, PO and the local authority that fell outside the parameters of the care proceedings and had not been raised properly, or at all, during the hearing.

McFarlane LJ held that those sections should be removed and further noted:

> *So that there is no ambiguity as to words such as 'removal' or 'redaction' in this context, I make it plain that the effect of any change in the content of the judge's judgment that is now made as a result of the decision of this court is not simply to remove words from a judgment that is to be published; the effect is to set aside the judge's findings on those matters so that those findings no longer stand or have any validity for any purpose. The effect is to be as if those findings, or potential findings, had never been made in any form by the judge".*

Comment

The facts of this case were extreme and McFarlane LJ was keen to emphasise that it should not lead to any 'defensive judging'. The family court and the COP often have to scrutinise carefully the conduct of professionals as part of deciding a case and as long as that is undertaken fairly there is no issue. In this case it appears that neither in cross examination by the family's representative nor in questioning by the judge were the social worker, the police officer or the local authority alerted to the highly damaging conclusions which the judge then set out in his 'bullet point' judgment.

The case is also an interesting source of detailed analysis on the nature of parties/intervenors and

what can be the subject of an appeal - where a person's human rights are engaged or a fair trial is at stake, an appeal can be made outside the narrow interpretation of an order/decision or determination.

Short Note: statutory charge and Article 8 damages

Although not a Court of Protection case, the case of *P v A Local Authority* [2016] EWHC 2779 (Fam) is interesting and relevant for what is said about the legal aid statutory charge in a claim for damages for breach of Article 8 ECHR.

In this case, P was 17 year old who had been born female but wanted to change his identity to male. His relationship with his adoptive parents broke down because of their difficulties in coming to terms with his decision. P stated that he did not want his adoptive parents to be involved with his life and he was moved by the local authority to live with foster carers. During wardship proceedings, the court ordered that the local authority should not share with P's adoptive parents any information regarding P's medical treatment or wellbeing without P's express consent. However, the local authority disclosed personal information about P to third parties who were friends of P's adoptive parents. When P found out, his mental health was severely compromised and he made a number of suicide attempts and self-harmed. He later brought a claim against the local authority for damages for breach of Article 8 ECHR.

Although P had received legal aid during the wardship proceedings, the LAA refused to grant legal aid for the proposed damages claim. The local authority conceded liability and offered to pay damages of £4,750 to P. The court approved the damages award but had to deal with the issue of whether the statutory applied. If the statutory applied to the damages award then P would receive no damages from the human rights claim as the entire award would be owed to the LAA for the costs incurred during the wardship proceedings. The LAA declined to waive the statutory charge.

The High Court (Family Division) held that the statutory charge did not apply to P's damages award as the LAA had refused to fund P's human rights claim. The damages awarded to P were recovered in a claim that did not have the benefit of a public funding certificate. The Court found that there was no legal or factual connection between the wardship proceedings and the human rights claim and so damages awarded for the human rights claim could not be recovered by the LAA for legal aid granted in the wardship proceedings.

The Court also described the LAA's approach in this case as being *"extremely unfortunate"* and some aspects of their decisions were *"plainly wrong and/or unreasonable and… difficult to understand, if not incomprehensive"* (para 77). The Court made plain its view that *"it would be extremely regrettable if P were to be denied the benefit of damages awarded to him as a result of the considerable emotional distress and harm to his mental well being he has suffered as a result of the wrongful conduct of an organ of the state."* It was unfortunate that the wording of the regulations meant that the Lord Chancellor, through the director of the LAA could only exercise his power or discretion to waive the statutory charge at the time when the determination of funding was made and no at some later date. It was not clear to the court why the discretion to wave the statutory charge had been fettered in that way.

There are two important lessons that can be learned from this case by COP practitioners. First, it is not unusual for human rights claims to follow COP proceedings, especially where there has been a successful s.21A MCA 2005 challenge which may open the door to a damages claim for unlawful deprivation of liberty in breach of Article 5 ECHR or breach of Article 8 ECHR. Whilst there is an entitlement to non-means tested legal aid in section 21A challenges, legal aid is often not available for any subsequent human rights claims. Applying this case by analogy, the LAA would not be able permitted to apply the statutory charge to recover non-means tested legal aid in s 21A proceedings where the LAA had refused to fund the subsequent human rights claim. Second, any request to the LAA to waive the statutory charge must be made at the time of the funding decision. There would appear to be (for no good reason) no power or discretion for the LAA to waive the statutory charge after the funding decision has been made.

President's guidance on allocation of work to s.9 judges

Sir James Munby P, as President of the Family Division, has issued new guidance on the allocation of work to s.9 judges. It is of relevance to the Court of Protection in that it provides (in material part) that proceedings under the MCA 2005 in the Court of Protection shall not be allocated or transferred to a section 9 judge (treated as a Tier 3 judge for purposes of the COP allocation rules, PD3B COPR 2007 para 3(viii)) without prior authorisation from the FDLJ (or in a case of urgency from the Urgent Applications Judge of the Family Division, or other Judge of the Family Division).

COP statistics for July to September 2016

The statistics for July to September (available here) contain the following highlights.

In July to September 2016, there were 7,762 applications made under the Mental Capacity Act 2005, up 19% on the equivalent quarter in 2015. The majority of these (54%) related to applications for appointment of a property and affairs deputy.

There were 6,684 orders made under the MCA, 10% lower than the same quarter in 2015. Almost half (46%) of the orders related to the appointment of a deputy for property and affairs. The trend in orders made has dropped in recent quarters, in contrast to the steady increase seen for applications.

Applications relating to deprivation of liberty increased from 109 in 2013 to 525 in 2014 to 1,497 in 2015. There were 781 applications made in the most recent quarter, double the number made in July to September 2015. Of the 781 applications made in July to September 2016, 538 (69%) came from a Local Authority, 216 (28%) from solicitors and 27 (3%) from others including clinical commission groups, other professionals or applicants in person. Half of applications for deprivation of liberty were made under the *Re X* process.

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Conferences at which editors/contributors are speaking

Royal Faculty of Procurators in Glasgow

Adrian will be speaking on adults with incapacity at the RFPG Spring Private Law Conference on 1 March 2017. For more details, and to book, see here.

Scottish Paralegal Association Conference

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

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Beverley Taylor

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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.

Chambers Details

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.

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THE QUEEN'S AWARDS FOR ENTERPRISE INTERNATIONAL TRADE 2013

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

Victoria Butler-Cole: vb@39essex.com

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

Neil Allen: neil.allen@39essex.com

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

Annabel Lee: annabel.lee@39essex.com

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

Anna Bicarregui: anna.bicarregui@39essex.com

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

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.

Adrian Ward 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

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