Mental Capacity Law Newsletter July 2016: Issue 67

Capacity outside the Court of Protection

Introduction

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

(1) In the Health, Welfare and Deprivation of Liberty Newsletter: some light shed on undoing advance decisions to refuse medical treatment;

(2) In the Property and Affairs Newsletter: Senior Judge's last judgment (on dispensing with service) and the latest LPA/deputy statistics;

(3) In the Practice and Procedure Newsletter: different aspects of (and consequences of) reporting restrictions;

(4) In the Capacity outside the COP Newsletter: guidance on s.20 Children Act 1989 'consents' and capacity, powers of attorney and managing telephone subscriber accounts;

(5) In the Scotland Newsletter: an update on practice before the Glasgow Sheriff court, a round-up of relevant case-law, and the review of the Council of Europe's Recommendation CM/Rec(2009)11 *on principles concerning continuing powers of attorney and advance directives for incapacity*.

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 relevant to social work professionals will also shortly appear on the SCIE website.

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New CPR Guidance published

The British Medical Association (BMA), the Resuscitation Council (UK), and the Royal College of Nursing (RCN) have very recently (30 June) issued updated guidance regarding anticipatory decisions about whether or not to attempt resuscitation in a person when their heart stops or they stop breathing.

This update to the 3rd edition takes into account, in particular, the decision in the *Winspear* case, concerning the requirement to consult family members (or others properly concerned in the person's welfare) where they do not have capacity to participate in the process leading to decisions made about CPR.

We reproduce below the main messages from the guidance, although cannot emphasise enough that they are not intended to be a substitute for reading the whole document and having regard to the clear and helpful flow-charts to assist decision-making.

1. *Considering explicitly, and whenever possible making specific anticipatory decisions about, whether or not to attempt CPR is an important part of good-quality care for any person who is approaching the end of life and/or is at risk of cardiorespiratory arrest.*

2. *If cardiorespiratory arrest is not predicted or reasonably foreseeable in the current circumstances or treatment episode, it is not necessary to initiate discussion about CPR with patients.*

3. *For many people, anticipatory decisions about CPR are best made in the wider context of advance care planning, before a crisis necessitates a hurried decision in an emergency setting.*

4. *Every decision about CPR must be made on the basis of a careful assessment of each individual's situation. These decisions should never be dictated by 'blanket' policies.*

5. *Each decision about CPR should be subject to review based on the person's individual circumstances.*

6. *In the setting of an acute illness, review should be sufficiently frequent to allow a change of decision (in either direction) in response to the person's clinical progress or lack thereof. In the setting of end-of-life care for a progressive, irreversible condition there may be little or no need for review of the decision.*

7. *Triggers for review should include any request from the patient or those close to them, any substantial change in the patient's clinical condition or prognosis and transfer of the patient to a different location (including transfer within a healthcare establishment).*

8. *For a person in whom CPR may be successful, when a decision about future CPR is being considered there must be a presumption in favour of involvement of the person in the decision-making process. If she or he lacks capacity those close to them must be involved in discussions to explore the person's wishes, feelings, beliefs and values in order to reach a 'best interests' decision. It is important to ensure that they understand that (in the absence of an applicable power of attorney or court-appointed deputy or guardian) they are not the final decision-makers, but they have an important role in helping the healthcare team to make a decision that is in the patient's best interests.*

9. *If a patient with capacity refuses CPR, or a patient lacking capacity has a valid and applicable advance decision to refuse treatment (ADRT), specifically refusing CPR, this must be respected.*

10. *If the healthcare team is as certain as it can be that a person is dying as an inevitable result of underlying disease or a catastrophic health event, and CPR would not re-start the heart and breathing for a sustained period, CPR should not be attempted.*

11. *Even when CPR has no realistic prospect of success, there must be a presumption in favour of explaining the need and basis for a DNACPR decision to a patient, or to those close to a patient who lacks capacity. It is not necessary to obtain the consent of a patient or of those close to a patient to a decision not to attempt CPR that has no realistic prospect of success. The patient and those close to the patient do not have a right to demand treatment that is clinically inappropriate and healthcare professionals have no obligation to offer or deliver such treatment.*

12. *Where there is a clear clinical need for a DNACPR decision in a dying patient for whom CPR offers no realistic prospect of success, that decision should be made and explained to the patient and those close to the patient at the earliest practicable and appropriate opportunity.*

13. *Where a patient or those close to a patient disagree with a DNACPR decision a second opinion should be offered. Endorsement of a DNACPR decision by all members of a multidisciplinary team may avoid the need to offer a further opinion.*

14. *Effective communication is essential to ensure that decisions about CPR are made well and understood clearly by all those involved. There should be clear, accurate, honest and timely communication with the patient and (unless the patient has requested confidentiality) those close to the patient, including provision of information and checking their understanding of what has been explained to them. Agreeing broader goals of care with patients and those close to patients is an essential prerequisite to enabling each of them to understand decisions about CPR in context.*

We hope that this – very important – document is the last iteration of its kind before we can move beyond the fixation with DNACPR decisions into a broader approach to advance care planning: see in this regard the ReSPECT (Recommended Summary Plan for Emergency Care and Treatment) project currently being undertaken by the Resuscitation Council (UK).

Call for evidence - are the current legal frameworks available to support informal patients in A&E sufficient?

Current work coordinated by the National Collaborating Centre for Mental Health (NCCMH) to improve access to urgent and emergency mental health care has led to debates about the sufficiency of legal frameworks available to protect people who present at A&E informally, but later either actively want to leave or need to be passively prevented from doing so by placing them with security guards/other staff. The use of the MCA 2005 has been advocated by some as an appropriate way of preventing a mentally disturbed person from leaving, and keeping them

in A&E until a Mental Health Act assessment can occur. In order to explore this area further, a call for evidence has been put out by Claire Barcham, asking people to send information on cases where people had left A&E, and sadly came to harm. The purpose is to consider which legal frameworks could have been used, whether further training and development is needed to ensure people could use the current frameworks appropriately, or whether a change in the law is needed.

More details, and the call for evidence itself, can be found in Claire's blog on Daisy Bogg's website here.

Guest Note: Learning Disability England

[*Editorial note: we are delighted to be able to publish this piece by Gary Bourlet & Alicia Wood, Co- founders, Learning Disability England*]

Learning Disability England launched in the House of Lords on the 14th June 2016. It has brought together the Housing & Support Alliance which was mainly made up of provider and commissioner members, with People First England, a project to get the voice of people with learning disabilities into the media and politics. We were inspired by Every Australian Counts, a campaign that brought together disabled people, families and professionals to campaign for better social care funding. What captured our interest was the fact that the campaign was led by disabled people and families and supported by organisations and professionals in an attempt to shift perceptions of disabled people in Australian society. That's what we are attempting to do at Learning Disability England.

We think that a big reason why people with learning disabilities and their families get such a bad deal in the UK is because they are still seen as second class citizens, not quite human. We have an abundance of charities out there trying to change attitudes and make life better for people with learning disabilities and their families but we think that part of the problem is when people with learning disabilities are portrayed as helpless victims, voiceless and in need of charity and others to speak for them, that this promotes the belief that people with learning disabilities are somehow different to the rest of us. This has to change and we will do this by making sure that people with learning disabilities are the main spokespeople in the media and at the political table.

Learning Disability England will always look at issues from a human rights and equality perspective and we want to challenge attitudes in a way that stops being with learning disabilities being seen as 'the other' and instead seen as 'one of us'. We will campaign for equality and people's rights but we will continue to be practical and offer solutions. We will also continue to hold expertise in mental capacity, deprivation of liberty and housing and social care law that relates to people with learning disabilities. One of our areas of work will be to establish a 'Fighting Fund' so that we can help people and families make legal challenges and change things for others.

Our constitution is the first (we believe) that gives real power to the charity members that would traditionally be 'beneficiaries', disabled people and families. Every member will get a vote and a say in what our priorities are and how we are run.

We think that if we want to really change things, that we need to work together and have support

staff, managers, social workers, academics, commissioners, health professionals on board as members. We particularly want legal professionals to support Learning Disability England, those that have long been supportive of people with learning disabilities being treated lawfully and equally. We also want those who have never worked with people with learning disabilities and want to help one of the few remaining groups of people in British society that are regularly discriminated against, institutionalised and marginalised, to rise up and challenge all that is wrong. We are Stronger, Louder, Together. Join us: www.learningdisabilityengland.org.uk

Short note: capacity and s.20 Children Act 'agreements'

In *re X, Y & Z, Re (Damages: Inordinate Delay in Issuing Proceedings)* [2016] EWFC B44, Human Rights Act damages claims were brought by two children (X and Y) and their mother (Z) following on from family court proceedings. The local authority had accommodated the children using section 20 of the Children Act 1989 but had then failed to take any care proceedings for some two years. The effect of this was that the children had no representative and were in an uncertain situation. The local authority took decisions about the children as if it had parental responsibility during that time (it did not have PR and knew it did not have PR) and failed to consult with their mother who did have parental responsibility. The local authority also restricted contact with the mother without any proper legal basis. Damages of £20,000 were awarded to each child and £5,000 to their mother for breaches of their Article 6 and Article 8 rights.

Of interest for those concerned with mental capacity matters were the dicta of HHJ Farquahar (not relevant on the facts of this case) about capacity in relation to s.20 Children Act 1989. We have on previous occasions referred to and highlighted the guidance given in Coventry CC v C [2012] EWHC 2190 as to the steps that social workers must take where a parent may lack capacity to give the 'consent' that is conventionally sought under s.20 Children Act 1989 from those with parental responsibility where arrangements are being made for accommodation under s.20 of the Act. HHJ Farquahar reiterated that guidance, but emphasised that there must be a specific matter which gives rise to a concern that the person lacks capacity, and also that the mere presence of mental health issues would not, itself, suffice to hold that an agreement is not valid.

Short note: litigation capacity under the microscope

In *Davila v Davila* [2016] EWHC B14 (Ch) Laurence Rabinowitz QC, in the course of a very long judgment concerning numerous (for these purposes) irrelevant issues, had cause to examine CPR Part 21 in some detail. The case was an application to set aside default judgment for a large sum of money (over £4 million at the time judgment was entered) in a claim where a mother (Marina) had sued her son (Alvaro) with another son (Ricardo) acting as her litigation friend.

Alvaro sought to have the litigation friend certificate signed by his brother discharged, set aside or terminated. Alvaro considered that Ricardo had no authority to issue proceedings on behalf of Marina. If he was right then the proceedings as a whole would be a nullity so that the default judgment obtained against him would fall away and he wouldn't have to pay over £4

million (guaranteed to focus the mind in the way that litigation friend issues in the COP rarely do).

It was common ground that Marina was a 'protected party' for the purposes of CPR Part 21, defined by CPR 21.1(2) to mean "a party, or an intended party, who lacks capacity to conduct the proceedings". CPR 21.2(1) provides that a protected party must have a litigation friend to conduct proceedings on his or her behalf.

CPR 21.4(3), dealing with who may be a litigation friend without a court order, provides that a person may act as a litigation friend if he "*(a) can fairly and competently conduct proceedings on behalf of the …protected party; (b) has no interest adverse to that of the … protected party; and (c) where the … protected party is a claimant, undertakes to pay any costs which the…protected party may be ordered to pay in relation to the proceedings, subject to any right he may have to be repaid from the assets of the … protected party*." CPR 21.5 sets out the procedure to be followed to become a litigation friend without a court order, including the need to file a certificate of suitability stating that he satisfies the conditions specified in CPR 21.4(3).

Ricardo had set out that he considered that he was suitable as a litigation friend and also set out details of his mother's mental health problems including dementia.

Alvaro made a series of allegations about his brother's unsuitability to act as a litigation friend, including that he had exerted undue influence over his mother and abused his powers under a Power of Attorney for his own gain.

The judge made the following holdings of relevance.

CPR 21.7(1) provided that the court may (a) direct that a person may not act as a litigation friend; (b) terminate a litigation friend's appointment; or (c) appoint a new litigation friend in substitution for an existing one. The powers were forward looking: none appeared to envisage or extend so far as to permit the court to revoke an appointment as litigation friend retrospectively *ab initio*.

On the facts of this case, there was little point in considering whether Ricardo should continue to be litigation friend (he had been substituted as a claimant sometime previously on his mother's death) and therefore CPR 21.7(1) did not assist Alvaro.

Alvaro had also applied to set aside the appointment of Ricardo as litigation friend retrospectively under CPR 11(6). The judge held on the facts of the case that CPR 11 (issues with the court's jurisdiction) did not assist Alvaro and even if there had been reason to dispute the court's jurisdiction, such a challenge would have needed to have been made within 14 days of serving the acknowledgment of service.

Alvaro also relied upon the inherent jurisdiction of the court for the purpose of seeking retrospectively to set aside Ricardo's appointment as litigation friend. The judge considered that, whether or not expressly set out in a rule, the court did have power to address serious transgressions affecting proceedings before it and that this was likely to include dealing with the consequences of a wrongful appointment of a litigation friend.

Whilst it was open to the court at any stage of the proceedings to be able to address the on-going ability of a particular individual to continue to act as litigation friend, it was important, given the serious consequences of it being successful,

that any application for relief of that type, once the conditions for it arose, should be pursued without delay.

Alvaro had not acted promptly in this case. The application was made some two and a half years after Ricardo had been appointed litigation friend and some three months after he had ceased to be his mother's litigation friend and had been substituted as the claimant.

Following the guidance given by the Court of Appeal in *Mitchell* [2014] 1 WLR 794 and *Denton* [2014] 1 WLR 3926 the judge held that unless Alvaro was able to explain and justify the delay, his application should be dismissed on the basis that it was materially out of time.

Alvaro had known that his brother was acting as litigation friend for his mother more than one year before he made the application. The judge held that he was an intelligent man, familiar with litigation and with ready access to legal advice and that there was no justification for the delay.

The judge rejected Alvaro's application that Ricardo's appointment as litigation friend to Marina be retrospectively revoked. Alvaro's contention that the litigation was at all times unauthorised was therefore not accepted.

At paragraph 137, the judge also made a series of useful observations on the appointment of litigation friends which are potentially of broader relevance outside the context of civil proceedings:

> (i) *CPR 21.4(3)(b) stipulated that in order for a person to act as a litigation friend that person must have "no interest adverse to that of the …protected party". The relevant inquiry was directed towards the conduct and outcome of the litigation for which the individual is to be appointed as litigation friend, and it was in most cases not relevant to search, outside the bounds of the particular litigation, for some factor that might suggest some potential conflict between the interests of the party and the interests of the litigation friend unless it could reasonably be said that this potential conflict may also affect the manner in which the litigation friend was likely to approach the conduct of the litigation itself.*
>
> (ii) *Moreover, what this prohibition is directed towards is an interest that is "adverse" to that of the protected party. It followed that the fact that the person appointed as litigation friend has his own independent interest or reasons for wishing the litigation to be pursued ought not, in general, to be a sufficient reason for impeaching that appointment. Such an interest would, at least in general, run in the same direction as the protected party rather than being adverse to the protected party's interests.*
>
> (iii) *However, it was necessary in this context to have regard to the decision of the Court of Appeal in Nottingham CC v Bottomley and another [2010] EWCA Civ 756, where Stanley Burnton LJ emphasised the need for the litigation friend to "seek the best outcome" for the protected party and for a litigation friend to "be able to exercise some independent judgment on the advice she receives from those acting for a claimant, and …be expected to accept all the advice she is given", something that might be difficult where, as in that case, the litigation friend worked for an organisation that would benefit from a settlement in a form that might not necessarily be to the benefit of the protected party itself.*

(iv) This highlights the fact that, even where the interests of the protected party and litigation friend generally run in parallel or coincide, this does not of itself preclude the possibility that, in some contexts, those interests might diverge and become adverse. Whether or not that is so will, of course, always depend upon the facts of the particular case.

(v) The purpose of the requirement that the litigation friend be able "fairly and competently" to conduct proceedings on behalf of the protected party was likely to be to ensure that the litigation friend has the skill, ability and experience to be able properly to conduct litigation of the sort in question. At the same time, what the requirement was unlikely to have envisaged, at least in general and save perhaps in exceptional cases, was that the court should be required to conduct a general inquiry extending far beyond issues of skill, ability and experience, and instead venturing into a consideration of unproven allegations of a series of potential transgressions said to have been committed over a period of years by the litigation friend in transactions not directly related to the matters giving rise to the litigation itself.

(vi) This was not intended to suggest that a court would not willingly consider in this context a finding or determination by a court or tribunal, domestic or foreign, to the effect that the litigation friend has been guilty, for example, of dishonesty, a crime, or conduct incompatible with the role of litigation friend. In contrast, what was unlikely in general to assist the court in a case such as the present, were simply allegations, contested on all sides, about matters arising in the context of other transactions, which are said to establish unsuitability.

Falling down on safeguarding: Ombudsman complaint concerning Oxfordshire County Council

The Local Government Ombudsman has criticised Oxfordshire County Council for its inadequate response to a safeguarding referral. The case concerned the care provided to a woman with dementia who spent a week at Huntercombe Hall care home, where she became dehydrated and had to be admitted to hospital. The Council's safeguarding investigation concluded that there had been 'partial neglect', but there was a failure to consider properly the evidence received from the care home, or to act on it. The CQC was not notified, and the Ombudsman found that the Council's failings may have put other residents at risk. The Council was required to pay the woman's husband £750 and the care home was told that it should waive the fee charged for the stay.

Updated guidance on Lasting Powers of Attorney

The Law Society has published an updated Practice Note for solicitors on Lasting Powers of Attorney.

Ofcom guidance on managing telephone subscriber account on behalf of someone else

Ofcom has issued guidance as to managing a telephone subscriber account on behalf of someone who needs help with their affairs. It focuses on the difference between using the 'third party bill management' service that telecoms companies are obliged to offer, and the use of powers of attorney in England & Wales.

As noted in the Scotland Newsletter, this guidance (as with so much else that supposedly covers all three UK jurisdictions) comes with a serious health warning that it is only, in reality, addressed to the position in England and Wales.

It's not just us: UN observations on mental health services in the UK

The United Nations Committee on Economic, Social and Cultural Rights has published a country report on the United Kingdom's compliance with the International Covenant on Economic, Social and Cultural Rights. The Committee is critical of the inadequate provision of mental health services in the UK, noting that:

> *Despite the legal duty introduced by the Health and Social Care Act of 2012 to deliver "parity of esteem" between mental and physical health, the Committee is concerned about the lack of adequate resources provided to mental health services. The Committee notes with concern the information on shortcomings in the implementation of the mental health legislation and the lack of adequate mental health care provided to persons in detention.*

The Committee also flags concern about the care of people with dementia, saying that it "urges the State party to take all necessary measures to ensure adequate pension benefits, care and treatment of older people, including by carrying out training programmes for doctors and health care professionals about the rights of older persons and the treatment of dementia and Alzheimer's diseases."

For more on this, see the story in the admirable Community Care.

Independence, authorisation and deprivation of liberty[1]

IN v Ukraine (Application no. 28472/08) (European Court of Human Rights)

Article 5 ECHR – deprivation of liberty - damages

Summary

Mr IN brought criminal proceedings for libel after his employment record noted that he had been dismissed for theft. Following his numerous complaints to the town prosecutor's office for failing to investigate his case, the prosecutor requested his placement in a psychiatric facility. Two psychiatrists studied Mr IN's complaint letters which contained evidence of a "high probability of socially dangerous behaviour". Paramedics, a psychiatrist, and police officers visited his home and he was taken to hospital in an ambulance. There was conflicting evidence as to the extent to which he allowed them into his home and whether he went with them voluntarily.

The following day he was examined by a panel of four doctors, including the two psychiatrists that were initially involved, and was involuntarily detained. He alleged that (i) his psychiatric confinement from March to December 2000 had breached Article 5(1), (ii) he had had no enforceable right to compensation under Article 5(5), and (iii) the civil proceedings for redress had been unreasonably long contrary to Article 6(1). The court upheld his complaints and he was awarded EUR 15,000. It found that there were no

[1] Note, in light of the commentary upon the Law Commission's Mental Capacity Deprivation of Project, to which Alex is a consultant, this note was drafted by Neil Allen.

fair and proper procedure for his deprivation of liberty and stated:

> *81 …* [T]*he vulnerability of persons with alleged mental disorders and the fact that they are under the control of the psychiatric facility personnel, requires clear effective guarantees against arbitrary involuntarily hospitalisation (see, mutatis mutandis, M.S. v. Croatia (no. 2), no. 75450/12, 19 February 2015), especially when, as in the present case, the confinement was initiated by a prosecutor exclusively on the basis of the applicant's letters to State bodies in the absence of any known complaints about the applicant's behaviour from other persons. Moreover, in the present case the panel of psychiatrists was composed of four doctors, two of whom were the same doctors who had initially decided to admit the applicant to hospital (see paragraph 13 above). This undermined the guarantees of independence of the health-care professionals, whose decision was the only basis for the applicant's deprivation of liberty. With all respect to their professional expertise, the broad powers vested in health-care professionals are to be counterbalanced by procedures aimed at preventing indiscriminate involuntary hospitalisation (see H.L. v. the United Kingdom, § 121, and L.M. v. Latvia, § 51, both cited above).* (emphasis added)

Comment

We mention this decision because of the potential implications it has for the Law Commission's forthcoming Draft Bill to amend the Mental Capacity Act 2005 and replace the deprivation of liberty safeguards. Under DoLS, in hospitals and care homes the urgent authorisation lacks such independence but is time-limited to 7 days' detention, extending to 14 days in total if there are exceptional reasons. But within that timeframe, an independent assessor must determine best interests. This "*should be seen as a cornerstone of the protection that the DOL safeguards offer to people facing deprivation of liberty if they are to be effective as safeguards at all*": *LB of Hillingdon v Neary* [2011] EWCOP 1377, at [174]. In terms of the present authorisation process, it will be recalled that in *Neary* Peter Jackson J held:

> *The responsibilities of a supervisory body, correctly understood, require it to scrutinise the assessment it receives with independence and a degree of care that is appropriate to the seriousness of the decision and to the circumstances of the individual case that are or should be known to it.* (emphasis added)

The Court of Protection similarly provides an independent judgment for deprivations of liberty occurring elsewhere. Similarly, under the Mental Health Act 1983 an approved mental health professional exercises their own independent judgment as to whether a person ought to be detained in hospital. According to the Commission's revised approach, it appears that commissioning bodies would authorise themselves to detain which, depending on the authorisation arrangements, raises potential risks of arbitrariness. Its interim position states:

> *1.42 … we are considering whether a defined group of people should receive additional independent oversight of the deprivation of their liberty, which would be undertaken by an Approved Mental Capacity Professional. Owing to the vast number of people now considered to be deprived of their liberty following Cheshire West, it would not be proportionate or **affordable** to provide such oversight to all those caught by article 5 of the ECHR. Whilst we are still working to develop the precise criteria that would operate to identify this group, we envisage that this group would consist of those who are subject*

> *to greater infringement of their rights, including, in particular, their rights to private and family life under article 8 of the ECHR.* (emphasis added)

There is a real risk that the significantly larger proportion of the population that are seen as deprived of their liberty will result, for economic reasons, in a drastic watering down of the current Article 5 safeguards. Ironically, it seems that the bar is so low, and the number of people deprived of liberty is so high, that providing that independent check may now be unaffordable. In *Cheshire West* Lady Hale referred to the need for a "*periodic independent check on whether the arrangements made for them are in their best interests*", although the court may have had Article 5(4) more in mind. But in *H.L. v. the United Kingdom*, the ECtHR held:

> *121. The Court observes that, as a result of the lack of procedural regulation and limits, the hospital's health care professionals assumed full control of the liberty and treatment of a vulnerable incapacitated individual solely on the basis of their own clinical assessments completed as and when they considered fit: as Lord Steyn remarked, this left "effective and unqualified control" in their hands. While the Court does not question the good faith of those professionals or that they acted in what they considered to be the applicant's best interests, the very purpose of procedural safeguards is to protect individuals against any "misjudgments and professional lapses" (Lord Steyn, paragraph 49 above).* (emphasis added)

Whilst in *L.M. v. Latvia* the ECtHR held:

> *51. In the present case, having had regard to the* conclusion of the panel of psychi*atrists …, it is evident that in actual fact the experts diagnosed the applicant's condition and automatically prescribed further hospitalisation. With all respect to their professional expertise, the broad powers vested in health-care professionals are to be counterbalanced by procedures aimed at preventing indiscriminate involuntary hospitalisation (see H.L., § 121, cited above).*

The ECtHR's reference in *IN v Ukraine* to "*the guarantees of independence*" is therefore potentially significant for future reform as it could suggest that a fair and proper detention procedure requires some degree of independent scrutiny in the administrative decision-making process that leads to the person being detained. Under the relevant Ukrainian domestic law, the initial decision to involuntarily admit a patient to hospital could only be taken by a psychiatrist. The necessity of detention had to then be confirmed by a panel of three doctors and the patient had the right to challenge that decision in court.

Frustratingly, the judgment does not expressly refer to whether the initial psychiatrist could sit on the panel or whether all members of the panel had to be independent of the initial decision. But the point is an important one. If the ECtHR is suggesting that Article 5(1) requires some guarantee of independence (as we have currently), this may pose challenges to a scheme which empowers commissioners of detention to authorise such detention. This point of legal principle is certainly something to bear in mind when we see the draft Bill at the end of this year.

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Conferences at which editors/contributors are speaking

4th World Congress on Adult Guardianship

Adrian will be giving a keynote speech at this conference in Erkner, Germany, from 14 to 17 September. 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 third (free) seminar in the series will be on 'Safeguarding and devolution – UK perspectives' (22 September). For more details, see here.

Deprivation of Liberty in the Community

Alex will be doing a day-long seminar on deprivation of liberty in the community in central London for Edge Training on 7th October. For more details, and to book, see here.

Taking Stock

Both Neil and Alex will be speaking at the 2016 Annual 'Taking Stock' Conference on 21 October in Manchester, which this year has the theme 'The five guiding principles of the Mental Health Act.' For more details, and to book, see here.

Alzheimer Europe Conference

Adrian will be speaking at the 26th Annual Conference of Alzheimer Europe which takes place in Copenhagen, Denmark from 31 October–2 November 2016, which has the theme Excellence in dementia research and care. For more details, 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 August. 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 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.

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.

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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.

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.

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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.

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.