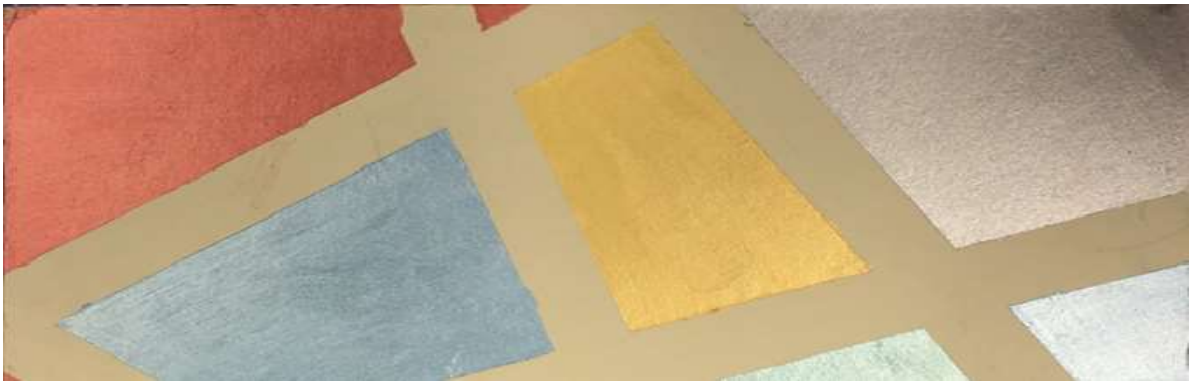
MENTAL CAPACITY REPORT: SCOTLAND

June 2021 | Issue 114



Welcome to the June 2021 Mental Capacity Report. Highlights this month include:

(1) In the Health, Welfare and Deprivation of Liberty Report: substance over form in DoLS authorisations, complex questions of coercion in medical treatment, and the limits of fluctuating capacity in the context of sex;

(2) In the Property and Affairs Report: a brisk dismissal of an attempt to appeal a judgment of Senior Judge Hilder about charging by a deputy, and easy read guides to making LPAs;

(3) In the Practice and Procedure Report: an important rapid consultation on hearings and the judicial view of remote hearings;

(4) In the Wider Context Report: the CPR responds to vulnerability, strengthening the right to independent living, capacity in the rear view mirror and the ECHR and the CRPD at loggerheads;

(5) In the Scotland Report: the Mental Welfare Commission on hospital discharges, change at Scottish Government (but how much) and welfare guardianships and deprivation of liberty.

You can find our past issues, our case summaries, and more on our dedicated sub-site here, where you can also find updated versions of both our capacity and best interests guides. We have taken a deliberate decision not to cover all the host of COVID-19 related matters that might have a tangential impact upon mental capacity in the Report. Chambers has created a dedicated COVID-19 page with resources, seminars, and more, here; Alex maintains a resources page for MCA and COVID-19 here, and Neil a page here. If you want more information on the Convention on the Rights of Persons with Disabilities, which we frequently refer to in this Report, we suggest you go to the Small Places website run by Lucy Series of Cardiff University.

Editors
Alex Ruck Keene
Victoria Butler-Cole QC
Neil Allen
Annabel Lee
Nicola Kohn
Katie Scott
Katherine Barnes
Arianna Kelly
Simon Edwards (P&A)

Scottish Contributors
Adrian Ward
Jill Stavert

The picture at the top, "*Colourful*," is by Geoffrey Files, a young man with autism. We are very grateful to him and his family for permission to

Contents

The hospital discharge scandal: MWC Report

Mental Welfare Commission for Scotland ("MWC") has issued its Report "Authority to discharge: Report into decision making for people in hospital who lack capacity". While a few comments and criticisms of the Report are appropriate, the Commission deserves congratulations for a huge amount of investigatory research followed by careful and thoughtful analysis, carried out – having regard to the sheer size of the task – within a commendably tight timescale; notwithstanding that the Report itself makes for depressing, indeed alarming, reading, with evidence-based confirmation of the worst fears already arising from the various matters that we reported and commented upon in the October and November Reports.

The Report is probably the most significant work of the Commission so far under the leadership of Julie Paterson, Chief Executive, who introduced the Report as follows:

"People who lack mental capacity and who are being cared for and treated in care homes and hospitals are among the most vulnerable in our society. The focus of this report was to examine the detail of a sample number of hospital to care home moves of people from across Scotland, to check that those moves were done in accordance with the law during the early stages of the pandemic.

"Some of our concerns relate specifically to the significant pressures of the pandemic.

But, worryingly, the report also finds more endemic examples of poor practice. Lack of understanding of the law, lack of understanding of good practice, confusion over the nature of placements, misunderstanding over power of attorney. These findings are very disappointing and may mean that many more moves were made without valid legal authority.

"This report also finds a lack of uniformity from one HSCP to another, with different

> *approaches to national legislation and guidance adopted in different areas.*
>
> *"We call on Health and Social Care Partnerships across Scotland, the Care Inspectorate and the Scottish Government to read our report in detail and act swiftly on our recommendations".*

The starting-point for the Commission's work was the same cohort of 5,204 patients discharged from NHS hospitals to care homes in Scotland from 1st March to 31st May 2020 on whom we commented previously. Political controversy now engulfs the Public Health Scotland ("PHS") Report after it was widely drawn to public attention that part of the remit of PHS is to safeguard the reputations of Scottish Ministers. For purposes of commentary from the viewpoint of law and human rights, that political controversy is largely irrelevant, as the PHS Report was totally damning by omission, in that it did not address, nor did it disclose that anyone addressed, the need for legality, or the concept that the patients affected were not in fact inanimate and inconvenient blockages occupying hospital beds (which is how the PHS Report seems to portray them as having been treated), but individual human beings with the same rights, including fundamental human rights, as everyone else.

MWC set out with the objective of investigating a sample of 10% of those 5,204 discharges. MWC sought information from Health and Social Care Partnerships ("HSCPs") in relation to people moved from hospital to registered care home settings during that three-month period. HSCPs were described as "very responsive" to that request, with the exception of Highland, an exception perhaps worthy of further attention. From those returns MWC sought information about 731 of those people, 465 of whom were reported by HSCPs to have lacked capacity to agree to a move from hospital to a care home. Eight of those did not fulfil the inclusion criteria for the enquiry, so the work focused on 457 people. Thus, the MWC Report requires to be considered from the starting-point that all of those investigated were unable to give valid consent to the move. Headlines suggesting that 20 of those were unlawfully moved are misleading. For 20 of them it appears that no potential cloak of legality was even offered. If one moves the focus from whether there was any such cloak of legality and how thin that cloak might have been in individual cases, which would not unfairly summarise MWC's approach, to asking how many of those discharges failed demonstrably to comply with the requirements for lawfulness in terms of Article 5 of the European Convention on Human Rights, as interpreted in relevant jurisprudence, the answers are different. This article uses "lawful" and "unlawful" by reference to that Article 5 test.

For a start, 90 moves (20% of the total) were claimed to have been authorised by section 13ZA of the Social Work (Scotland) Act 1968. However, those 90 all lacked relevant capacity, and therefore required a lawful process that was compliant with Article 5 in order to render those discharges lawful, even though – absurdly - some of those in the total investigated were contradictorily described by relevant HSCPs as being both incapable of consenting yet having consented. The MWC Report refers to the 2007 guidance to local authorities on their powers under the 1968 Act, issued by Scottish Executive, but does not appear to narrate that that

guidance is clear that section 13ZA should not be used where the proposed move would result in an Article 5 deprivation of liberty. It also appears to fail to mention that the reason for this was simple: section 13ZA does not provide for a procedure that would comply with Article 5. Local authorities are bound to comply with such guidance by virtue of section 5 of the 1968 Act. It would thus appear that all of those 90 discharges were unlawful.

267 of the moves were reported to have been authorised under powers of attorney. The relevant section of the MWC Report is a litany of failures to check almost all of the basic necessary requirements before it could be accepted that the person claiming to be the attorney was appropriately empowered. In 78 cases it was admitted that the power of attorney document had not even been read, and in a further 61 cases no details had been recorded, and indeed in an undisclosed proportion of those discharge had proceeded on the basis of being "advised of the contents" rather than reading them. In some cases the attorney held only financial powers, or the document had not been registered with the Office of the Public Guardian. In 70 cases it was either unknown or not recorded whether the power of attorney authorised the move. In 77 cases it was "unclear if the powers had been validly triggered". Three significant further points do not appear to be addressed in the Report.

Firstly, it is not reported whether in any of these 267 cases there was any check with the Office of the Public Guardian as to whether – even where a certified power of attorney document had been produced – the document remained in force, with neither the document itself nor any of the powers in it revoked.

Secondly, the MWC Report does not appear to address the question of whether the power of attorney documents empowered the attorney purportedly to authorise a deprivation of liberty, regardless of whether it could be said to "authorise the move". Some lawyers dispute whether a power of attorney can ever confer power to authorise a deprivation of liberty, and although that point has been raised in litigation it does not appear ever to have been authoritatively determined. The less restrictive view is that such power can be conferred, but – having regard to decisions such as *McDowall's Executors v IRC* [2004] STC (SCD) 22 – the document must clearly and explicitly empower the attorney to authorise a deprivation of liberty.

Thirdly, exercise of such power is only one preliminary element for Article 5 compliance. For example, it must be shown that the person in question has a "real and effective" ability to test the lawfulness of the deprivation of liberty. The Strasbourg Court has made clear that this must not be an illusory and theoretical right, but one which practically and actively assists in the appeal process. See also the "checklist" referred to at the end of the third item in this section of this Report.

One cannot deduce from the MWC Report that it was clearly and fully established that any of those 267 moves was lawful.

Similar doubts and reservations attach to many of the moves said to have been authorised by a welfare guardian. In some cases, a guardianship order had been applied for, but had not yet been granted, and there had been no interim order. The terms of the guardianship orders had not

been checked and recorded. There was no record of any check with the Office of the Public Guardian as to whether the order produced was still in force, and that neither the order nor any of the powers conferred had been revoked.

One can only have sympathy with the pressures under which those trying to manage these discharges were placed. In a telling passage, MWC writes that:

> *"It was also suggested that those involved in discharge planning were under significant pressure to manage delayed discharges, which felt like a process of "emptying beds" and it was a "battle" to retain focus on the person. Whilst this was exemplified by the pandemic, it was explained that the pressures relating to delayed discharge processes have been long standing and challenging. Without understanding of what may constitute a deprivation of liberty, practice may well be flawed, with consequent impact on the rights of the individual who lacks capacity. Discharges from hospital to care homes bring this into sharp focus and practitioners require high levels of training, support and leadership to fulfil their functions to ensure that any moves are lawful and compliant with an individual's human rights, as well as their economic, social and cultural rights."*

That echoes our assessments in relevant items in the October and November Reports.

The background of unlawfulness and endemic and widespread ageism and disability discrimination that we have narrated in various relevant Reports dates back well before the pandemic, and continues. In December 2018, MWC first publicly reported a policy of NHS Greater Glasgow and Clyde moving patients from hospital into various care homes without obtaining either valid consent of the patient or, where they were unable to give that, relevant legal authority. The patients were detained in the care homes and were prevented from leaving. These were clear violations of Article 5. Then a lady held against her will for over a year applied to a Mental Health Tribunal for her release. The units weren't hospitals, therefore the Tribunal did not have jurisdiction, but expressed concern. EHRC commenced the EHRC action, initially defended. Then on 20th November 2020 the Commission issued a statement "Equality and Human Rights Commission reaches settlement on ending unlawful detention of adults with incapacity by NHS Great Glasgow and Clyde". NHS Greater Glasgow and Clyde, and the owners of the chain of care homes, acknowledged that their practice was without legal authority and was unlawful.

We have had the PHS Report and the comment that it has attracted, and now the MWC Report, yet widespread unlawfulness continues. Latest reports are that hospital patients who might previously have been unlawfully decanted into care homes are now simply being left on medical wards. It is reported that all wish to return home, all are medically fit for discharge, but some have left and been returned by the police. Apart from these attempted escapes, none have been off the ward in several months even for a walk. They literally sit in a medical ward on a bed all day. This is an unlawful situation. The Supreme Court has made it amply clear that it is a deprivation of liberty to keep a patient in hospital, except with valid informed consent of the patient, beyond the point where life-saving treatment is immediately necessary and where

the person is clinically fit for discharge. Overall, the MWC Report should be read in full by all concerned with aspects of the management of hospital patients at and beyond the point where life-saving treatment is no longer immediately necessary and the person is clinically fit for discharge, whether actually discharged or not. It is inconceivable that this impressive Report will not at last result in substantial improvements in this continuing situation, or that there should be any avoidable delay in implementing in full the eight recommendations addressed to HSCPs, the two addressed to the Care Inspectorate, and the final one addressed to Scottish Government.

A final requirement not narrated in the MWC Report is at long last to put in place, with the minimum of delay, appropriate provision for authorising deprivations of liberty, at a very minimum those arising when hospital patients no longer require to be there for life-saving treatment that is immediately necessary, and are clinically fit for discharge. On a possible continuation of that theme, see the next item.

Adrian D Ward

Change at Scottish Government – but how much?

We looked forward to what might be achieved in the first year of the new Parliament in the February Report and to the elections themselves in March. It was known that Jeanne Freeman, former Cabinet Secretary for Health and Social Care, was standing down. It must be positive news that Humza Yousaf has had his abilities and experience transferred from the Justice brief to become Cabinet Secretary for Health and Social Care. Since before the establishment of the Scottish Parliament, territorialism as between justice and health interests has from time to time presented difficulties that have required conscious efforts to bridge. Thus the Bill for the Adults with Incapacity (Scotland) Act 2000 was dealt with principally by the Justice and Home Affairs Committee, whereas the Bill for the Adult Support and Protection (Scotland) Act 2007, which included the last round of previous significant reform to the 2000 Act, was allocated to the Health Committee, though at that stage it certainly assisted continuity that Roseanna Cunningham MSP was convener of each committee at the relevant time. There have nevertheless been divergences, particularly when aspects of Part 5 of the 2000 Act have been directed and viewed as a separate island with inadequate respect for its strong links to the rest of the Act.

Kevin Stewart has been appointed Minister for Mental Wellbeing and Social Care, effectively replacing Clare Haughey, who has become Minister for Children and Young People. It is perhaps understandable that as a former mental health nurse, mental health issues remained closest to her heart. The announcement of the establishment of the Scott Review on 19th March 2019 placed substantial emphasis on mental health aspects. It did contain the following paragraph:

> *"At the same time as the review takes place, we will complete the work we have started on reforms to guardianships, including work on restrictions to a person's liberty, creation of a short term placement and amendments to power of attorney legislation so that these are ready when the review is complete."*

Nevertheless, AWI reform, even the seriously

urgent need for deprivation of liberty provision, effectively stalled for two years. There are however now positive signs that at least as regards deprivation of liberty issues when patients are ready for discharge from hospital, the pace may now pick up again. In the January Report we already referred to the possibility of legislation in the first session of the new Parliament, and in the February Report we referred to establishment of the "AWI Emergency Legislation Commencement Consideration Group", which became so concerned about the topic of unlawful discharges that it has morphed into a group advising on the prospect of at least some early AWI reform. We shall report any decisions by the new ministerial team to move forward with this. If so, one may expect a period of public consultation on whatever might be proposed.

Biographies of the Scottish Cabinet and Ministers are at: https://www.gov.scot/about/who-runs-government/cabinet-and-ministers/.

Adrian D Ward

Welfare guardianship and deprivation of liberty

The decision of the Sheriff Appeal Court in *JK (Respondent & Appellant) v Argyll and Bute Council ("the Council") (Applicant & Respondent)*, a decision bearing the reference DNN-AW15-19, helpfully addresses the fundamental question as to whether under the Adults with Incapacity (Scotland) Act 2000 ("the 2000 Act") powers can be granted to a welfare guardian which have the effect of depriving the adult of his or her liberty, and also the inter-relationship between sections 64 and 70 of the 2000 Act. The decision extends, in effect, to a helpful refresher course on the purpose, approach and principal relevant provisions of the 2000 Act. Rather disappointingly, the decision lacks a similarly helpful analysis of the steps required under Article 5 to render lawful such a deprivation of liberty as was contemplated in the case.

At first instance the sheriff concluded that *JK* was suffering from a serious delusional disorder substantially affecting her everyday life, and resulting in levels of self-neglect and lack of personal hygiene that were potentially life-threatening. She required and would continue to require constant support with all aspects of her life because she lacks the cognitive ability to look after her own basic needs. The sheriff held that the adult was incapable in relation to decisions about, or acting to safeguard, her personal welfare and was likely to continue to be so incapable for the foreseeable future. He demonstrated that the section 1 principles would be met by granting a guardianship order. Having considered a proposed care package for the adult, the sheriff took the view that many of the powers craved were not necessary. He concluded that it was essential to grant the following powers:

> *"(a) The power to decide where the adult should live, to require her to live at that location, to convey her to that location and to return her to that location in the event of her absenting herself therefrom*
> *…*
> *"(j) The power to decide where the adult is permitted to go and decide whether or not the adult should be accompanied by a person nominated by her guardian to assist with her personal safety and welfare."*

Those two powers in particular were, as the Appeal Court put it, bitterly contested. In practical terms, the issue centred upon whether the adult should remain in her own home, despite the disadvantages and risks of doing so, as she wished, or be transferred with the care package to a secure facility where she would be deprived of her liberty, but within that constraint afforded suitable accommodation and care, and as much freedom as could reasonably be allowed.

The sheriff granted powers (a) and (j) but limited the duration of the order to one year for the express purpose of permitting the court to review progress with rehabilitation, and the deprivation of liberty, within a reasonable timeframe.

The principal argument for *JK* in the appeal was that the sheriff could not competently grant to a welfare guardian powers which would have the effect of depriving the adult of liberty unless the 2000 Act contained express authority to that effect, which it did not. The argument for *JK* founded upon *Welsh Ministers* v *PJ* [2020] AC 757 at paragraphs 24 and 25, and *MM* v *Secretary of State for Justice* [2019] AC 712 at paragraph 31. For the Council it was submitted that the 2000 Act does afford the power sought, and that under reference to *Stanev* v *Bulgaria* (2012) 55 EHRR 22 the 2000 Act contains a carefully constructed system which is Article 5 compliant, which allows the adult to express the adult's views, past and present, and under which measures can only be authorised where they are necessary. The Appeal Court accepted that powers (a) and (j) were contrary to the expressed wishes of the adult, and amount to a deprivation of her liberty and are an interference with her right to choose her place of residence. However, they were granted in the specific context of safeguarding the welfare of an adult who lacked relevant capacity and whose living conditions, self-neglect and lack of personal hygiene were potentially life-threatening. The Appeal Court held that the grant of the powers sought accorded with the existing line of sheriff court decisions *(Muldoon, Applicant* 2005 SLT (Sh Ct) 52, *M, Applicant* 2009 SLT (Sh Ct) 185, and *Scottish Borders Council v AB* 2020 SLT (Sh Ct) 41). The Appeal Court pointed out that section 64 is in wide terms. It does not contain a lengthy list of possible powers. It includes power to deal with all ("all" emphasised by the court) aspects of the personal welfare of the adult, as well as power to deal with particular matters. Any powers had to be granted consistently with the section 1 principles. While section 64 does not contain an explicit power to detain, it can – subject to the application of the principles – be deployed to address situations such as that of *JK*. The court was satisfied that given the factual matrix, "a matter" or "all aspects" in section 64 would cover the welfare issues of transitioning an adult from one form of care and accommodation to another form of care and facility, ensuring that the adult remains in the facility to address the adult's needs, and returning the adult there should she leave. The Appeal Court derived no assistance from the two cases cited for *JK* as they "involve an entirely different scheme in a different factual matrix".

On the relationship between sections 64 and 70, the Appeal Court held – in short – that it could not be argued that section 70 detracted from the power to authorise a deprivation of liberty under section 64, because section 70 contained additional safeguards to enforce a decision of a

guardian in accordance with welfare powers when it is not complied with, therefore section 70 and its safeguards cannot be engaged unless the relevant powers have been granted under section 64 in the first place.

A ground of appeal suggesting that the order would remove from the adult any right to litigate against the Council "was not pressed … to any material extent", but in any event the Appeal Court held that the application did not seek any power on the part of the welfare guardian to make decisions for the adult in relation to any litigation which might be brought by the adult against the local authority. The Appeal Court held that the adult was not constrained in that regard by the provision of section 64(3) that a guardian has power to act as the adult's representative in relation to any matter within the scope of the powers conferred by the guardianship order.

Surprisingly, as indicated above, the Appeal Court did not go through the actual steps required for compliance with Article 5. Thus, for example, the Appeal Court did not address whether or not it had been proved that the adult was "of unsound mind", a prerequisite for the engagement of Article 5(1)(e). One would also have preferred the Appeal Court to "tick off" the other requirements for Article 5 compliance, expressly rather than by implication. A useful guide to these requirements can be found in Appendix B to the Report of the Law Commission of England & Wales on Mental Capacity and Deprivation of Liberty.

Habitual residence of a child

Always subject to the major caveat that "adults with impaired capacity are not big children", decisions relating to children can sometimes, with due caution, be of assistance in cases concerning adults. *K v D* was a decision by Sheriff A M Mackie in Glasgow Sheriff Court on 19th February 2021. Proceedings had commenced in Glasgow Sheriff Court in which interim residence and contact orders had been made with the parties' agreement in November 2015. Mother then moved from Glasgow to Liverpool without telling father or obtaining his consent or a court order permitting the relocation. Mother then sought dismissal of the Scottish proceedings in their entirety, submitting that the English courts had acquired exclusive jurisdiction on the basis that the child's habitual residence had changed from Glasgow to Liverpool, and that the Glasgow court was *forum non conveniens*. Mother's motion was refused. It was undisputed that the Glasgow court had had jurisdiction when the proceedings were commenced. The Glasgow court was not satisfied that there was another court of competent jurisdiction enabled to consider and rule on the residence and contact arrangements. The child's habitual residence had not been changed by the unilateral action of the pursuer.

Adrian D Ward

Evidence of solicitor for granter of Will

Thompson v Hopkinson [2021] SAC (Civ) 14, decided on 22nd March 2021, was yet another case in which a disappointed relative of a person not benefiting from the Will of a relative, sought production and reduction of the Will on grounds that it was impetrated by facility and circumvention. A particular point at issue was whether evidence should be admitted from the solicitor who prepared the Will and arranged for

it to be executed, on the grounds that the pleadings gave no fair notice and lacked candour. It was held that that ground of appeal was misconceived and arose from a misunderstanding of the nature and function of written pleadings. Both parties had been "economical in their pleadings". The appellant's pleadings set out the deceased's physical ailments and amounted to bold assertions and bare statements without any specification, beyond a reference to confusion on the part of the deceased. It would have been sufficient for the respondent to have met those averments with a simple denial. In fact, the respondent averred that the deceased was not facile. That was a positive statement which the respondent had offered to prove. It was sufficient. It gave fair notice that the evidence to be elicited from the solicitor would have included evidence addressing the deceased's state of mind.

Moreover, for the appellant to have succeeded he would have required to establish not only the facility of the deceased at the time when the Will was made, but acts of circumvention or fraud, and lesion. The appellant's evidence of facility was inadequate and was directly contradicted by the solicitor's evidence. There was scant evidence of lesion. There was insufficient circumstantial evidence before the sheriff from which circumvention could be inferred.

Adrian D Ward

Standing of ECHR Article 6

A criminal case not directly relevant to adult incapacity matters nevertheless contained the significant observation that ECHR, and particularly Article 6, did not form a separate code which was applicable, independent of domestic principles of fairness, but rather that it permeated the whole system. The case was *Darbazi v HM Advocate* [2021] HCJAC 10.

Adrian D Ward

Electronic and digital Wills

The regimes for execution of Wills, and of powers of attorney, are distinct, but discussion of either regime often takes account, for comparative purposes, of the other. Articles by John Kerrigan are always worth reading. Practitioners in adult incapacity law may therefore find interesting his article on "Electronic and digital Wills" at 2021 SLT (News) 25.

Adrian D Ward

Editors and contributors

Alex Ruck Keene: **alex.ruckkeene@39essex.com**

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 and the European Court of Human Rights. He also writes extensively, has numerous academic affiliations, including as Visiting Professor at King's College London, and created the website www.mentalcapacitylawandpolicy.org.uk. To view full CV click here.

Victoria Butler-Cole QC: **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 contributor to 'Assessment of Mental Capacity' (Law Society/BMA), 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 ECHR/CRPD human rights, mental health and incapacity law and mainly practises in the Court of Protection and Upper Tribunal. Also a Senior Lecturer at Manchester University and Clinical Lead of its Legal Advice Centre, he teaches students in these fields, and trains health, social care and legal professionals. When time permits, Neil publishes in academic books and journals and created the website www.lpslaw.co.uk. To view full CV click here.

Annabel Lee: **annabel.lee@39essex.com**

Annabel has experience in a wide range of issues before the Court of Protection, including medical treatment, deprivation of liberty, residence, care contact, welfare, property and financial affairs, and has particular expertise in complex cross-border jurisdiction matters. She is a contributing editor to 'Court of Protection Practice' and an editor of the Court of Protection Law Reports. To view full CV click here.

Nicola Kohn: **nicola.kohn@39essex.com**

Nicola appears regularly in the Court of Protection in health and welfare matters. She is frequently instructed by the Official Solicitor as well as by local authorities, CCGs and care homes. She is a contributor to the 5th edition of the *Assessment of Mental Capacity: A Practical Guide for Doctors and Lawyers* (BMA/Law Society 2019). To view full CV click here.

Katie Scott: **katie.scott@39essex.com**

Katie advises and represents clients in all things health related, from personal injury and clinical negligence, to community care, mental health and healthcare regulation. The main focus of her practice however is in the Court of Protection where she has a particular interest in the health and welfare of incapacitated adults. She is also a qualified mediator, mediating legal and community disputes. To view full CV click here.

Rachel Sullivan: **rachel.sullivan@39essex.com**

Rachel has a broad public law and Court of Protection practice, with a particular interest in the fields of health and human rights law. She appears regularly in the Court of Protection and is instructed by the Official Solicitor, NHS bodies, local authorities and families. To view full CV click here.

Stephanie David: **stephanie.david@39essex.com**

Steph regularly appears in the Court of Protection in health and welfare matters. She has acted for individual family members, the Official Solicitor, Clinical Commissioning Groups and local authorities. She has a broad practice in public and private law, with a particular interest in health and human rights issues. She appeared in the Supreme Court in *PJ v Welsh Ministers* [2019] 2 WLR 82 as to whether the power to impose conditions on a CTO can include a deprivation of liberty. To view full CV click here.

Arianna Kelly: **arianna.kelly@39essex.com**

Arianna has a specialist practice in mental capacity, community care, mental health law and inquests. Arianna acts in a range Court of Protection matters including welfare, property and affairs, serious medical treatment and in matters relating to the inherent jurisdiction of the High Court. Arianna works extensively in the field of community care. To view a 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.

Scotland editors

Adrian Ward: **adw@tcyoung.co.uk**

Adrian is a recognised national and international expert in adult incapacity law. He has been continuously involved in law reform processes. His books include the current standard Scottish texts on the subject. His awards include an MBE for services to the mentally handicapped in Scotland; honorary membership of the Law Society of Scotland; national awards for legal journalism, legal charitable work and legal scholarship; and the lifetime achievement award at the 2014 Scottish Legal Awards.

Jill Stavert: **j.stavert@napier.ac.uk**

Jill Stavert is Professor of Law, Director of the Centre for Mental Health and Capacity Law 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. 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.

Conferences

Members of the Court of Protection team are regularly presenting at webinars arranged both by Chambers and by others.

Alex is also doing a regular series of 'shedinars,' including capacity fundamentals and 'in conversation with' those who can bring light to bear upon capacity in practice. They can be found on his website.

Neil is doing a DoLS refresher (by Zoom) on 29 June 2021. For details and to book, see here.

Neil and Alex are doing a joint DoLS masterclass for mental health assessors (by Zoom) on 12 July 2021. For 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 the dementia charity My Life Films in return for postings for English and Welsh events. For Scottish events, we are inviting donations to Alzheimer Scotland Action on Dementia.

Our next edition will be out in July. Please email us with any judgments or other news items which you think should be included. If you do not wish to receive this Report in the future please contact: marketing@39essex.com.

Sheraton Doyle
Senior Practice Manager
sheraton.doyle@39essex.com

Peter Campbell
Senior Practice Manager
peter.campbell@39essex.com

Chambers UK Bar
Court of Protection: Health & Welfare
Leading Set

The Legal 500 UK
Court of Protection and Community Care
Top Tier Set

clerks@39essex.com • DX: London/Chancery Lane 298 • 39essex.com

LONDON
81 Chancery Lane,
London WC2A 1DD
Tel: +44 (0)20 7832 1111
Fax: +44 (0)20 7353 3978

MANCHESTER
82 King Street,
Manchester M2 4WQ
Tel: +44 (0)16 1870 0333
Fax: +44 (0)20 7353 3978

SINGAPORE
Maxwell Chambers,
#02-16 32, Maxwell Road
Singapore 069115
Tel: +(65) 6634 1336

KUALA LUMPUR
#02-9, Bangunan Sulaiman,
Jalan Sultan Hishamuddin
50000 Kuala Lumpur,
Malaysia: +(60)32 271 1085