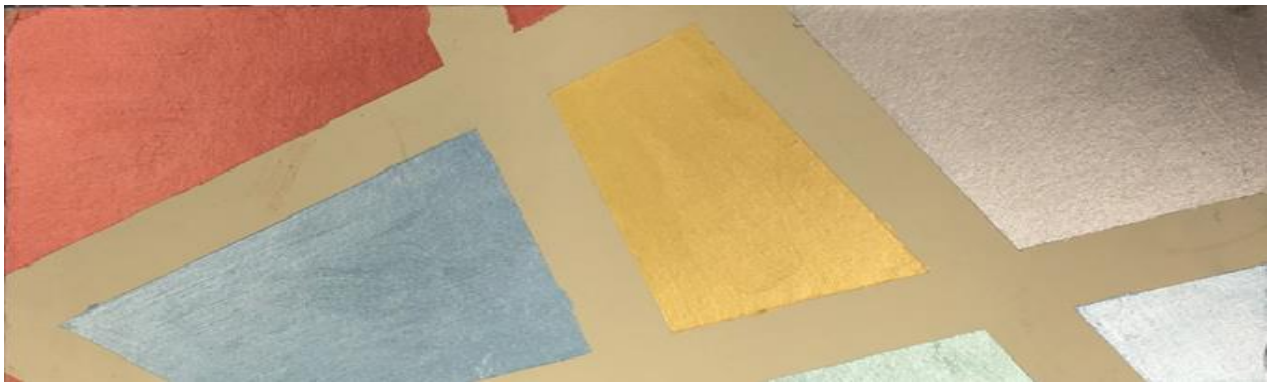

Welcome to the May 2022 Mental Capacity Report. Highlights this month include:

(1) In the Health, Welfare and Deprivation of Liberty Report: Fact-finding in relation to coercive and controlling behaviour; habitual residence; and how recent should evidence be for the deprivation of liberty of a child?

(2) In the Property and Affairs Report: The Governments to the 'Moderninsing Lasting Powers of Attorney' consultation

(3) In the Practice and Procedure Report: Balancing privacy and open justice; costs of proceedings; and compliance with practice directions.

(4) In the Wider Context Report: Mental Health Act reform; COVID-19 in care homes; and MARSIPAN is replaced.

(5) In the Scotland Report: The World Congress; the Scott Review; and more on the PKM Litigation and Guardians' remuneration.

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.

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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 use his artwork.

Contents

HEALTH, WELFARE AND DEPRIVATION OF LIBERTY

Consideration of coercive and controlling behaviour at a fact-finding hearing

MB v PB [2022] EWCOP 14 (15 March 2022) (Sir Jonathan Cohen)

Best interests - Contact

In *MB v PB (by her litigation friend, the Official Solicitor) & Oths* [2022] EWCOP 14, MB, the husband of P, applied to the Court of Protection to challenge the standard authorisation and the contact restrictions between him and his wife. Sir Jonathan Cohen was asked to make various findings of fact in relation to 44 separate allegations relating *inter alia* to: (i) patterns of coercive and controlling behaviour; (ii) the impact of MB's conduct upon caregiving staff at the hospital and care home; (iii) whether MB had interfered with the provision of care to P; (iv) the immediate impact of MB's contact with P on her; (v) the impact of MB's conduct upon P.

It was agreed by the parties that P lacked capacity to make decisions about her residence, care and contact with others.

P and MB married in 1981. They have four sons. P's sister and one of her sons (selected as the spokesperson) gave evidence in relation to the married life of P and MB – one characterised by P's unhappiness to the extent that before her youngest was born, she left with her three other children and was placed in a refuge. P was rarely allowed out by MB and she used to describe her discontent to her oldest children. P's access to her sister was also restricted. Their relationship had *"all the hallmarks of coercive and controlling behaviour"* (para 27).

In 2015, P suffered from a brain haemorrhage from which she made a complete recovery. In March 2018, she collapsed and had suffered from a sub-arachnoid haemorrhage. She was admitted to hospital and remained as an-patient in an acute unit between March and July 2018. During the hospital stay, it became apparent that MB thought he knew what was best for P and that he was completely unwilling to accept any sort of advice or comply with recognised procedures. The judge concluded that during P's hospital stay, MB would seek out junior or inexperienced staff to try and get them to do what he wanted done or to complain. There were also a number of safeguarding concerns in relation to MB's behaviour to P, which meant that many involved with P were anxious about her returning home.

P was then moved to a very specialist care home for individuals who have suffered from serious brain assaults. P was described as a very happy and cheerful person. MB would place relentless pressure on the care home staff, which culminated in notice being given due to him being overbearing. Evidence was given as to P's behaviour and presentation during and following contact.

MB accepted during closing submissions that he could not care for P. P's sister and children strongly supported her continued placement at the care home. The issue for the court's consideration was therefore contact. The current contact between MB and P was solely virtual.

The judge found that there was a pattern of coercive and controlling behaviour both before and after P's admission into full-time care. MB had a controlling and overbearing attitude to care staff. MB sought to interfere with the care provided to P; and limit the contact she has with her sister and children. At times, P has found contact with MB upsetting and unwelcome but on other occasions, she has derived pleasure from it.

The judge emphasised the paramount importance of P being able to remain at her current care home, given there is no other placement in Wales that could meet her needs. He determined that loss or cessation of all contact between MB and P was not in her best interests. The care home agreed to a trial of face-to-face contact but not within the main building. The judge directed the parties to consider a trial period of contact whereby P's reaction could be assessed and with MB's ability to comply with a contract of expectations. He made it clear that he was not making a best interests judgment of contact at this stage but wanted its practicality to be explored.

Comment

The case was brought pursuant to section 21A of the Mental Capacity Act 2005 ("MCA 2005") by MB, even though the focus of the proceedings was on contact arrangements. The judge observed that the court has power pursuant to section 16 of the MCA 2005 to make decisions on behalf of P; and section 21A is the appropriate jurisdictional route, relying on Baker J's comments in *KK v CC* [2012] EWHC 2136, para 16. Whilst it is not unusual for courts to consider matters beyond a strict deprivation of liberty in the context of section 21A proceedings, it is a helpful reminder as to how the court justifies consideration of other related matters.

'Sufficiently recent' medical evidence for the deprivation of liberty of children

Miklic v Croatia 41023/19 (Judgment : Article 5 - Right to liberty and security : First Section) [2022] ECHR 311 (7 April 2022)

Article 5 ECHR

Summary

A child committed offences of intrusive behaviour and threats while lacking mental capacity. Relying on psychiatric and psychological expert opinions, the court placed him in a psychiatric hospital. His requests for fresh expert opinion were subsequently refused and his detention continued. He claimed that his Article 5(1)(e) rights were breached because of a failure to follow the procedure prescribed by domestic law.

The ECtHR reiterated that no deprivation of liberty conforms with Article 5(1)(e) without seeking the opinion of a medical expert and "*the objectivity of the medical expertise entails a requirement that it was sufficiently recent, the assessment of which depends on the specific circumstances of the case before it*" (para 63). Not only had the domestic procedure been breached by failing to obtain a fresh opinion but the evidence relied upon to warrant his continued confinement was 1-2 years old and "*the Court is not convinced that either of those expert opinions could be considered both objective and recent within the*

meaning of the Court's case-law on Article 5 § 1 (e)" (para 74). Fresh medical expert opinion should have been sought because, *inter alia*, being of a very young age he had shown changes in his condition, a privately-commissioned medical opinion implied his condition and evolved, and so more accurate information was needed (para 75).

So, contrary to Article 5(1)(e), the prolonging of his detention "*had on the whole been adopted in a procedure at odds with the relevant provisions of the domestic legislation and had not been based on objective and recent medical expert opinion*" (para 76).

Comment

We mention this case because of its potential relevance to the liberty protection safeguards. First, the case illustrates that care will need to be taken when obtaining medical evidence for young people, as there may not be a clear diagnosis or their condition may evolve. Second, there will be an issue regarding for how long the medical opinion can be relied upon, particularly when a 3-year renewal of the authorised arrangements is being contemplated. Whilst "*sufficiently recent*" depends on the "*specific circumstances*", as far as we are aware there is no ECtHR case where detention under Article 5(1)(e) has been authorised for three years based upon the predicted persistence of the mental disorder. That is not of course to say it would necessarily be contrary to Article 5(1)(e) to do so, but LPS certainly will test the court's jurisprudential boundaries.

Habitual residence

IM v Gateshead Council & Anor [2020] EWFC B85 (3 July 2020) (HHJ Moir)

International Jurisdiction of the Court of Protection – Other

Mental Capacity – Residence

Summary

This decision, handed down in July 2020, but only appearing on Bailii in 2022, concerned the question of whether the Court of Protection had jurisdiction to hear a challenge to a DoLS authorisation brought by a person placed by a Scottish local authority in a care home in Gateshead. From the relatively short judgment, it appears that all the parties before the court (i.e. the relevant English local authority supervisory body, the placing Scottish local authority, and IM himself by the Official Solicitor) took the view that it was necessary for the court to determine IM's habitual residence in order to have jurisdiction to determine his DoLS authorisation. On the facts of the case before her, and applying the case-law on habitual residence to them as at the point of the case coming before her HHJ Moir decided that she was not to be satisfied that the necessary degree of stability and permanence had been established to enable her to determine that IM's habitual residence has moved from Scotland to England and Wales.

Comment

As noted above, the judgment is in relatively short form, and it may have been that something has been lost in compression, but to the extent that HHJ Moir considered her jurisdiction to entertain a challenge under s.21A MCA 2005 was predicated upon IM's habitual residence in England & Wales, it is

respectfully suggested that this could not be correct. The grant of a DoLS authorisation is not contingent upon a person being habitually resident in England & Wales; it is purely based upon a person's physical presence in the place for which authorisation is sought. The question of a person's ordinary residence (linked to, although not always co-terminous with, their habitual residence) comes in at the point of determining which supervisory body is responsible for the authorisation process – see paragraphs 180 and 181 of Schedule A1, making express provision for the situation where a person's ordinary residence cannot be determined.

The jurisdiction of the Court of Protection to consider a challenge against a DoLS authorisation arises expressly out of s.21A MCA, which provides the 'job spec' for the court determining such an application. There is, therefore, no reason to go to Schedule 3 and the provisions relating to habitual residence there because they are only relevant for identifying the jurisdiction of the court to exercise its functions under the MCA 'in so far as it cannot otherwise do so' (paragraph 7(1)).

Further, and to the extent relevant, an interpretation such as that applied by HHJ Moir is difficult to square with Article 5(4) ECHR, guaranteeing the right of challenge to detention. A person in IM's position would be subject to DoLS authorisation which was immune to challenge before the courts of England & Wales if they were not habitually resident there; nor would the Scottish courts be able to pronounce upon the validity or otherwise of the authorisation.

It is undoubtedly the case that habitual residence would be relevant for purposes of determining the court's wider jurisdiction under ss.15 and 16 MCA, and it may be that the compression in the judgment has led to the elision of the court's consideration of its jurisdiction under s.21A and ss.15/16. We would hope that in any future case involving these issues (and we are aware of a significant amount of cross-border 'traffic' in this context) there will be the opportunity to revisit this decision.

Seminar: Restraint and Positive Behaviour Support Plans for people with Learning Disabilities

Tor and Dr Theresa Joyce will be holding a seminar (chaired by Senior Judge Hilder) on their recent paper to assist legal professionals and judges in understanding and responding to PBS plans that include the use of physical restraint against people with learning disabilities. There will be an opportunity for questions and discussion. Questions can be sent in advance to marketing@39essex.com or during the seminar using Zoom's Q&A function. People can attend either remotely or in person, and can find full details (including how to register) here.

PROPERTY AND AFFAIRS

Modernising Lasting Powers of Attorney – Government Response to the Consultation

The Ministry of Justice has published the Government's Response to the consultation on Modernising Lasting Powers of Attorney. While some proposals for reform have been supported, the response set out that a number of proposals will remain under consideration and be subject to further study, and finalised plans for reform are awaited. In summary:

1. Role of the Witness:
    - *The government will continue to investigate the possibility of using technology to replace the witness with a similar (digital) function within the digital channel.*
    - *The government will investigate how to combine the role of the certificate provider and the witness in relation to execution of the LPA by the donor.*
    - *Review the requirements for witnessing the donor's execution and attorneys' execution, accepting these may be different in a future service.*
    - *The government will consider whether retaining a mechanism to evidence the attorney's execution of the document provides a safeguard to an LPA.*
    - *The government will provide greater clarity around the role of the certificate provider in assessing the donor's understanding of the LPA and protecting against fraud, abuse and undue pressure. It intends to do this by giving additional guidance and support to those carrying out this role and providing a way to raise concerns directly with OPG.*
    - *The government will not introduce a requirement that the certificate provider be a professional.*
    - *The government will ensure that the LPA continues to be, or be treated as, a deed even if changes are made to the requirements for witnessing an LPA.*
2. Role of the Application:
    - The government will continue to investigate the feasibility of two potential approaches to registration, namely sending an LPA for registration as soon as it is executed, and allowing for delayed registration of an LPA to continue, as is currently the case.
3. OPG Remit:
    - *The government will consider whether checks on the attorney are necessary and appropriate when considered alongside other safeguarding mechanisms that exist across the LPA process, including when an LPA is used.*
    - *The government will seek to verify the identity of the donor and certificate provider in the modernised service.*
    - *The government will consider including a range of identification options to ensure access for everyone.*

- *The government will proceed with developing a system of conditional checks…and not discretionary checks.*
- *The government will not be introducing additional suitability checks on attorneys (such as criminal background checks).*

4. How to object:
   - *The government will pursue* [an approach in which the] *OPG receives all objections* [rather than the current regime, in which the OPG may only consider objections from donors, attorneys and others named in the LPA].
   - *The government will amend legislation to permit objections to the registration of an LPA from anyone.*
   - *The government will amend legislation so that OPG will have the power to refer cases directly to the Court of Protection where necessary.*
5. When to object:
   - *The government will investigate a method for people to raise objections during the creation of an LPA.*
   - *The government will consider introducing a system that permits objections to be registered by a third party before the LPA process is started. Government will test the feasibility of such a system and will consider which third parties should be permitted to object.*
   - *The government will commit to keeping a statutory waiting period as part of the objections process for registering an LPA.*
   - *The government will continue to investigate what the appropriate length of the statutory waiting period should be in a future service, accounting for other changes to the objections process across both digital and paper channels.*
   - *The government will not reintroduce a requirement to provide people to notify on an LPA.*
6. Speed of service:
   - *The government will not be proceeding with an urgent service.*
7. Solicitors' access to the service:
   - *The government will proceed with working to integrate a digital LPA channel with document and case management systems.*
   - *[The government] will ensure sufficient powers within the legislation for us to mandate regulated legal professionals to use the digital service in the future should it be required.*
8. Other responses and recommendations:

- *OPG will continue to work towards COVID-19 recovery and return to normal service.*
- *The government is committed to ensuring that a paper channel remains available for those who need it.*
- *OPG will continue to develop and roll out its Use an LPA service.*
- *Amendable LPAs will remain out of scope for modernising lasting powers of attorney.*
- *At the appropriate point in development [the government] will work with stakeholders and the public to develop the guidance and information they need to use and understand the modernised LPA registration service.*
- *While the government will not merge the different types of LPA, [the government] will consider how [it] can remove the duplication of data entry where information is repeated across both types.*
- *[The government] will not introduce a requirement to use a solicitor. However, [the government] will continue to look at the most appropriate opportunities to provide information on seeking legal advice in the LPA process as development continues.*
- *OPG will provide more information for donors on the option of security bonds and the protection they can provide for donors as part of a modernised process.*

PRACTICE AND PROCEDURE

National DOLS Court

An announcement has recently circulated that the President of the Family Division has decided to introduce a pilot "National DoLS Court" (for those under 18) to launch on 4 July 2022. This is an initiative which arises from the increasing numbers of cases involving the High Court being asked to authorise the deprivation of liberty of those under 18 under its inherent jurisdiction. It is intended to be an administrative device to work out (1) which cases are dealt with by Family Division judges in the Royal Courts of Justice; and (2) which cases are connected to care cases and can be dealt with by s9 judges (i.e. judges authorised to sit as judges of the High Court) at the same time as they decide those care cases.
It is not, for instance, anything to do with the Court of Protection exercising its powers to authorise deprivation of liberty, or children/young people subject to detention under the Mental Health Act 1983.

For more on deprivation of liberty in relation to those under 18, see our guidance note here.

Costs of proceedings relating to legal capacity

Kovacevic v Croatia [2022] ECHR 364

In *Kovacevic v Croatia* [2022] ECHR 364, the European Court of Human Rights (ECtHR) was concerned with the costs of proceedings relating to legal capacity. The precise factual matrix is not of wider relevance, although it is perhaps important to note that the case did not concern – directly – the proceedings by which the authorities had sought to 'divest' the applicant of his legal capacity (a procedure which would, in English terms, crudely equate to declaring that he lacked capacity to make any relevant decision and appointing a deputy to do so on his behalf). Rather, they concerned proceedings before the Constitutional Court where the applicant sought successfully to overturn the decisions reached in those proceedings, but where the Constitutional Court did not award him his costs. He was not legally aided, such that he would be required to meet the cost of his lawyer out of his own pocket (and the dissenting judgment of two of the seven judges made a number of observations about the majority's blurring of the distinction between legal aid and costs provisions).

The ECtHR found that his Article 6(1) ECHR rights had been breached. Of wider relevance were two points. The first was the court's agreement with the applicant that

> *79. …the proceedings before the Constitutional Court were of existential importance for him as the impugned decisions of the civil courts had deprived him of his legal capacity. It reiterates in this regard that the applicant is a person suffering from a mental disability and therefore had to be legally represented to effectively protect his rights, it being understood that the assistance of an advocate before the Constitutional Court cannot be seen as unnecessary even for non-vulnerable individuals because that court decides on complex issues which, for any lay person, may be difficult to grasp".*

The second was the court's consideration of the potential 'chilling' effect of costs awards, the court noting that it was *"mindful that social services are often faced with difficult and delicate decisions, especially when, as in the present case, they must decide whether to initiate the relevant proceedings to*

deprive a person with a mental disability of the capacity to act. The Court is therefore aware that they might adopt a more defensive approach to their duties if, each time the judicial authorities did not agree with their initiative, they had to pay the costs of the proceedings to the counterparty" (paragraph 82).

On the facts of the case, and the specific rules of the Constitutional Court, there was no risk that the relevant social services authority would face a costs award, so the ECtHR did not find that any such chilling effect could be made out.

These two observations might be thought to pull in slightly different directions, but they recognise two facets of the issues that arise in cases involving mental capacity – the need for proper representation, and the recognition that the decision-making can be finely balanced. As to the first observation, some may feel that they wish to point out in the context of the current means test review quite how problematic it is that those whom the state is seeking authority to deprive of their liberty under the community DoL procedure are not eligible for non-means-tested legal aid and are therefore, in very many situations, either going to have to pay for the privilege of representation or forgo such representation altogether.

An "intense" focus on the competing rights of Articles 8 and 10

Tickle v Herefordshire County Council [2022] EWHC 1017 (4 May 2022) (Lieven J)

Reporting restrictions

Summary

A frequent theme in the reporting of cases in the Court of Protection is the issue of transparency, and the importance of protecting P's privacy while balancing the media's right to report on stories that matter to the public.

In *Tickle v Herefordshire* [2022] EWHC 1017 (Fam), sitting in the Family Division, Lieven J gave weight to the importance of a party's right to "tell their own story", as a result of which she granted the application of freelance journalist Louise Tickle to screen an interview with a mother of three children, Ms Logan (who can be named as a result of the decision Lieven J reached).

Ms Logan and her children were involved in Children Act 1989 proceedings brought by Herefordshire County Council ("HCC"). One of the councillors at HCC was concerned about the case, including the wider issues of quality about HCC's Children's Services Department which had been the subject of several critical judgments by Keehan J between 2018 and 2021.

The councillor brought the case to the attention of Ms Tickle and introduced her to Ms Logan. Ms Tickle then made an application – informally and without notifying either HCC or Cafcass in a manner Lieven J was not overly impressed by [11] - to screen an interview with Ms Logan as part of a BBC Panorama programme. HCC cross-applied seeking a reporting restriction order ("RRO") which would protect, inter alia, the names of relevant social workers.

At paragraphs 24-34 the court set out the relevant legal framework: the balancing exercise between Articles 8 and 10 ECHR and the competing rights that fall to be considered in accordance with the dictum of Lord Steyn in *Re S (Identification: Restrictions on Publication)* [2005] 1 AC 593 at [17]. Lieven J then "extracted" the following principles:

36. Firstly, neither Article takes precedence over the other, but the Court must undertake an "intense focus" on how the competing rights apply in the particular case; Re S at [17].

37. Secondly, the child's interests, whilst neither paramount not determinative, are a "major factor" and "very important"; Re Webster at [56]. The child's interests should be considered first though they can be outweighed by the cumulative effect of other factors; ZH (Tanzania) v Secretary of State for the Home Department [2011] 2 AC 166 at [33].

38. Thirdly, the Court should not treat it as inevitable that publicity would have an adverse impact on children. In each case the impact must be assessed by reference to the evidence before the Court rather than to any presumption of harm; Clayton v Clayton [2007] 1 FLR 11 at [51]. Although I note Lady Hale in PJS v News Group [2016] UKSC 26 emphasising that children have their own privacy rights independent of those of their parents.

39. Fourthly, the Court should give weight to a party's right to "tell their own story" so as to vindicate their Article 8 rights, see Tickle v Griffiths above.

Lieven J further observed:

41. It is important to keep distinct the powers of the Court to restrict publication of information about proceedings, contrary to the normal principles of open justice, for the purposes of preserving the anonymity of the children, whether under statute or the inherent jurisdiction, and restricting the publication of information about adults concerned in a case. ***In general, it is not for the Court, certainly not the Family Court, to restrict the media from publishing comment about employees of public authorities or private companies, save in very particular circumstances. If such comment is unfair or untrue there are other mechanisms of redress.*** *(emphasis added).*

Lieven J was not persuaded by arguments that interviewing the mother, Ms Logan, would be detrimental to her children, noting there was "no specific evidence of potential harm to the children" [52] by the broadcast of such interviews.

61. This is a case where the factors militate in favour of allowing Ms Logan to speak openly about her experiences and not to require her to be anonymised. I therefore consider that the restrictions that HCC seeks to impose on Ms Tickle's interview and the Panorama programme are too wide.

62. Firstly, I accept that there is a strong public interest in issues surrounding HCC's social work practice and children's social care being known and subject to public debate. There have been a number of critical judgments in the Court and adverse reports by Ofsted. That is in itself a matter of public concern and of wide potential interest.

63. Secondly, there is a broad public interest in both the operations of children's services and of the family justice system in being transparent and open so that the public have a greater understanding of what happens in these cases, both in terms of good practice and bad.

64. Thirdly, there is a considerable difference between the media being able to report on the generality of concerns and being allowed to interview a named and identifiable individual who can

tell their own story in an unanonymised form. I therefore accept there is a justifiable reason under Article 10 for Ms Tickle being able to interview Ms Logan in an unanonymised form.

65. Fourthly, considerable weight should be given to Ms Logan's right to tell her own story, in her own words and as an individual who can be recognised. That does not mean that I accept the accuracy of what she wants to say, let alone all her criticisms of HCC. As in so many of such cases, she may have a one-sided view of events and may have failed, and continue to fail, to appreciate legitimate concerns of HCC about the safety of her children. However, that does not remove or even lessen her right to say what she wants in a public forum.

66. It is important to have closely in mind that it is not for the Court to censor an individual's Article 10 rights, or to only permit things to be said in public which the Court agrees with or approves of. At the second hearing in this matter Ms Tickle produced a short list of matters she wished to cover in the broadcast and Mr Chisholm made some submissions on what should or should not be covered. I made clear that I did not consider this to be a matter for the Court. The Court's role is to protect the best interests of the children. It is not the role of the Court to become a quasi-Press regulator, seeking to judge the accuracy of the material which the media wishes to report. Although this may to some degree become inevitable in undertaking the Article 8 and 10 balance, it is not the focus of the Family Court's consideration.

67. Balancing against those factors is the potential harm to the children from their mother being identified and it therefore being inevitable that they too will be identifiable, at least in their immediate community and possibly on the internet. There are a number of factors which lead me to the conclusion in this case that the harm to the children is relatively limited and therefore the Re S balance lies in favour of Ms Tickle's application.

68. The children are all at or under the age of 8. Their use of social media is still limited (to a degree) and Ms Logan can act to protect them in a way that would be more difficult if they were older. Their immediate community already knows about the involvement of Children's Services so the programme will not come as a surprise to that immediate community as would often be the case.

69. Most importantly, this case does not involve the kind of distressing and highly personal information which is sadly common in care proceedings. There are no allegations of sexual or physical abuse, and no psychologically deeply personal matters relating to the children are set out in the court records. Any reference to care proceedings will to some degree interfere with the children's Article 8 rights to private life, but the intrusion here is not of the level engaged in many public law children's cases. If there were such very personal matters, I would be much more reluctant to allow any risk of wider identification of the children.

Noting that some would be able to identify the children, Lieven J noted the conclusion in *Clayton v Clayton* approvingly: that it should not always be assumed that publicity and identification of children is harmful to children, let alone is necessarily a barrier to transparency [71]. In a fairly novel line of reasoning she also observed that *"there may be benefit in this case for the children in their mother being able to tell her story, feel that she has been listened to, and believe that she is acting for the wider benefit of other children."* [72]

As to the request to anonymise staff, Lieven J distinguished the RRO made in *Abbasi*, where there was clear evidence of vilification and threats to staff. She held:

78. ….the powers of the Court to order anonymisation in relation to professionals need to be exercised with considerable care. Social workers are employees of a public authority conducting a very important function that has enormous implications on the lives of others. As such, they necessarily carry some public accountability and the principles of open justice can only be departed from with considerable caution.

79. The social workers here are not being made subject to a campaign of harassment of the type in issue in Abbasi. Therefore any interference in the social workers Article 8 rights is certainly not of the level considered in that case, and is no different to any individual who may be commented upon or criticised in a public broadcast. Ms Tickle and the BBC are undertaking a documentary programme with all the journalistic standards that are applicable. For those reasons I do not conclude that there is a justification for anonymity sufficient to justify the interference with Article 10 rights."

Comment

The theme of Open Justice has loomed large over the Court of Protection in recent years, particularly with the creation of the much-lauded Transparency Project by Professor Celia Kitzinger. For our part we consider it is now a well and openly reported jurisdictions – notwithstanding the general protections that remain in place to safeguard P's identity in most cases. Recent cases such as this and *PH and RH v Brighton and Hove City Council & Ors* [2021] EWCOP 63 suggest that, the necessary "balancing exercise" between articles 8 and 10 notwithstanding, the courts remain anxious that parties should be supported to "tell their own stories", wherever this can be done without harm to others.

Practice Directions are not suggestions

Xanthopoulos v Rakshina [2022] EWFC 30 (12 April 2022) (Mostyn J)

In a judgment concerning cross-applications in divorce proceedings, Mostyn J had a number of pointed comments regarding what Sir James Munby P had characterised as 'a deeply rooted culture in the family courts' of non-compliance with guidance, procedure and orders. The court concluded these preliminary remarks with a warning that non-compliance with rules and orders may lead to reports to the professional bodies for misconduct:

[2] The preparation for this hearing can only be described as shocking:

i) Paragraph 15 of the High Court Statement of Efficient Conduct of Financial Remedy Proceedings provides that skeleton arguments for interim hearings must not exceed 10 pages. The husband's skeleton argument ran to 24 pages and the wife's skeleton argument ran to 14 pages.

ii) Skeleton arguments were due by 11:00 on the working day before this hearing. Both parties filed late. The husband's skeleton argument was filed only on the morning of the hearing. The wife's skeleton argument was filed at around 17:30 the day before the hearing.

iii) Paragraph 18 of Sir Jonathan Cohen's order dated 15 March 2022 provided that the husband's statement was to be filed and served by 12:00 on 21 March 2022. The husband's statement is dated 22 March 2022. I do not know when it was filed, but I am told by the wife's representatives that it was only served on her on 24 March 2022.

> *iv) Paragraph 20 of that same order provided that the parties' statements to be filed and served for this hearing would be limited to 6 pages each with any exhibit accompanying the same limited to 10 pages (a total of 16 pages). The husband's statement ran to 11 pages and its exhibit ran to 15 pages (a total of 26 pages). The wife's statement also ran to 11 pages and its exhibit ran to 28 pages (a total of 39 pages).*
>
> *v) FPR PD 27A paragraph 5.1 provides that unless the court has specifically directed otherwise that there shall be one bundle limited to 350 pages of text. I have been provided with four bundles respectively containing 579 pages, 279 pages, 666 pages, and 354 pages (a total of 1,878 pages).*

[3] This utter disregard for the relevant guidance, procedure, and indeed orders is totally unacceptable. I struggle to understand the mentality of litigants and their advisers who still seem to think that guidance, procedure, and orders can be blithely ignored. In Re W (A Child) (Adoption Order: Leave to Oppose) [2013] EWCA Civ 1177, [2014] 1 WLR 1993, paras 50-51, Sir James Munby P, having referred to "a deeply rooted culture in the family courts which, however long established, will no longer be tolerated", continued:
"I refer to the slapdash, lackadaisical and on occasions almost contumelious attitude which still far too frequently characterises the response to orders made by family courts. There is simply no excuse for this. Orders, including interlocutory orders, must be obeyed and complied with to the letter and on time. Too often they are not. They are not preferences, requests or mere indications; they are orders."
That was nine years ago. But nothing seems to change. In the very recent decision of WC v HC (Financial Remedies Agreements) [2022] EWFC 22 Peel J astutely pointed out at [1(i)]:

> *"Court Orders, Practice Directions and Statements of Efficient Conduct are there to be complied with, not ignored. The purpose of the restriction on statement length is partly to focus the parties' minds on relevant evidence, and partly to ensure a level playing field. Why is it fair for one party to follow the rules, but the other party to ignore them? Why is it fair for the complying party to be left with the feeling that the non-complying party has been able to adduce more evidence to his/her apparent advantage?"*

It should be understood that the deliberate flouting of orders, guidance and procedure is a form of forensic cheating, and should be treated as such. Advisers should clearly understand that such non-compliance may well be regarded by the court as professional misconduct leading to a report to their regulatory body.

Conferences: The Judging Values and Participation in Mental Capacity Law Conference (20 June 2022)

The Judging Values in Participation and Mental Capacity Law Project conference will be held at the British Academy (10-11 Carlton House Terrace, London SW1Y 5AH), on Monday 20th June 2022 between 9.00am-5.30pm.

Is there something unique about being a lawyer or judge in the Court of Protection (CoP)? Could this uniqueness have something to do with the values that CoP professionals have? This conference will look at these questions, as well as key practical challenges for lawyers, participants, and decision-

makers who are charged with applying the Mental Capacity Act 2005 in England and Wales. Drawing on the academic research conducted through the Judging Values and Participation in Mental Capacity Law project (including close to 60 in-depth interviews with CoP practitioners and retired judges), issues to be explored include:

- How values orient legal professionals in practising and judging in the CoP;
- The law and reality of considering P's values in best interests decision-making;
- The challenges of effective participation in the CoP and why "P-centricity" is so hard to achieve in practice;
- How academic research and legal practice in the CoP can mutually and productively inform one another;
- Potential areas for training for CoP legal professionals;
- What might be learned from other international mental capacity regimes.

The conference fee is £25 and a buffet lunch and refreshments will be provided. The conference will be followed by a drinks reception.

As well as presentations by the Judging Values project team, distinguished panel speakers include: Former President of the Supreme Court Baroness Brenda Hale of Richmond, Former High Court Judge Sir Mark Hedley, Former Senior Judge of the Court of Protection Denzil Lush, Former District Judge of the Court of Protection Margaret Glentworth, Victoria Butler-Cole QC (39 Essex Chambers), and Alex Ruck Keene (39 Essex Chambers, King's College London).

The day will feature plenary sessions as well as break-out thematic discussions that will both inform and facilitate the reflections of conference participants. The event is well suited to contribute to ongoing CPD requirements for both solicitors and barristers, and will be of interest to academics of mental capacity law.

If you would like to attend, please register on the events page here by 1 June 2022. If you have any queries please contact the Project Lead, Dr Camillia Kong: camillia.kong@bbk.ac.uk

Conferences: 7th World Congress on Adult Capacity 7-9 June 2022

Against the odds, preparations and involvements from across the world are moving strongly forward to assure the success of the 7th World Congress on Adult Capacity in Edinburgh International Conference Centre on 7th–9th June 2022. Speakers from 29 countries across five continents (at latest count) have committed to attend personally (subject to any remaining controls affecting their individual journeys) to contribute to plenary and parallel sessions of the Congress. For Scotland and the UK, it will combine major involvement of Scotland's law reform process, led by the Scott Review Team, and eminent contributions from across the UK, with a once-in-a-lifetime worldwide perspective, with both contributions and interactions from far and wide. The event has by now been allocated to every inhabited continent except Africa, but this will be only the second time in Europe. The event is a must for everyone with an interest in mental capacity/incapacity and related topics, from a wide range of

angles and backgrounds, including people with mental and intellectual disabilities themselves, and their families and carers; professionals, legislators, administrators, providers of care, support and advocacy services, and others. The event will provide:

- a focus for developments of human rights-driven provision for people with mental and intellectual disabilities,
- a powerful springboard for future research, reform and practical delivery,
- an opportunity to share and discuss worldwide practical experience and initiatives across the huge range and variety of relevant disabilities, in many cultural settings,
- as the first Congress since the start of the pandemic (the 2020 event having been postponed until 2024), a unique opportunity to consider the impact of the pandemic on human rights across the world,
- for professionals and workers in all relevant disciplines and services, an essential understanding of the rapidly evolving practicalities, possibilities and expectations that now set the standards of best practice, and
- in particular for practising lawyers and other professionals, an enhanced understanding of current law, its proper interpretation, and forthcoming developments.

Certificates for CPD purposes will be provided to all who request them.

Amid the difficulties and threats of the pandemic and now war, but with excellent support and best advice, the organising committee opted for a live, in-person event, to a huge welcome from intending participants weary of life by online communications and platforms – helpful though they have all been in the absence of alternatives. Despite the difficulties, the organising committee has also been able to ensure financial viability through any uncertainties that may remain, with hugely valued support from both Scottish and UK Governments, and others, led by the Law Society of Scotland, and including supporters such as the National Guardianship Association of the United States, and with more promised in the pipeline, all to be duly acknowledged in the near future. Further such support continues to be welcome, from any who still wish to commit to contributing to the success of the event.

In terms of the programme, well over 100 abstract submissions (several of them multiple submissions by teams) from across the globe, each to be presented personally at the Congress, and all of a high standard, have been rigorously reviewed and accepted. The line-ups for the plenary sessions now appear to be largely settled, though with some potential contributors still to be confirmed. At time of going to press, the confirmed elements in the plenary sessions are as follows:

PLENARY 1: CONGRESS OPENING, ADULT CAPACITY – THE PRESENT AND FUTURE

CONGRESS OPENING AND WELCOME – Adrian Ward, President, WCAC 2022

SESSION CHAIR – Lord Jim Wallace of Tankerness, Member of House of Lords (attending in A Private Capacity)

SPEAKERS

Kevin Stewart MSP

Her Honour Judge Carolyn Hilder, Senior Judge of the Court of Protection

Prof Dr Makoto Arai, Chuo University, and founder of the World Congress series, President of WCAG 2010
Prof Jonas Ruskus, Vice Chair of the CRPD Committee

PLENARY 2: LAW REFORM – BALANCING PROTECTIONS AND FREEDOMS

SESSION CHAIR – Adrian Ward, President, WCAC 2022

SPEAKERS
John Scott QC, Chair, Scottish Mental Health Law Review
Prof Volker Lipp, Full Professor of Law, University of Göttingen, and President of WCAG 2016
Prof Gerard Quinn, UN Special Rapporteur on the Rights of Persons with Disabilities
Ray Fallan, Network Growth and Development Officer, tide

PLENARY 3: SUPPORTED DECISION-MAKING

SESSION CHAIR – Prof Jill Stavert, Chair, WCAC 2022 Academic Programme Committee

SPEAKERS
Aine Flynn, Director of the Decision Support Service
Prof Israel Doron, Dean – Faculty of Social Welfare and Health Sciences, University of Haifa
Dr Michael Bach, Director, Canadian Centre for Diversity and Inclusion

PLENARY 4: WCAC 2022 AND BEYOND

SESSION CHAIR – John Scott QC, Chair, Scottish Mental Health Law Review

SPEAKERS
Prof Wayne Martin, Director, The Autonomy Project, University of Essex
Mary-Frances Morris, Alzheimer
Adrian Ward, President of WCAC 2022
Prof Dr Isolina Dabove, Main Researcher and Professor, National Scientific and Technical Research Council – Argentina and President of WCAC 2024

THE WIDER CONTEXT

Guidance Note: Capacity and Housing Issues

Alex, Sian Davies, Rachel and Stephanie have produced a guidance note on capacity and housing issues. It provides social workers and those working in front-line settings an overview of the interaction between mental capacity and housing law, including relation to homelessness, possession claims, tenancies and licences, and in the context of applications for judicial authorisation of deprivation of liberty.

Read the guidance note here.

Mental Health and Well-Being Plan: Discussion Paper

DHSC has published a discussion paper and opened a call for evidence on mental health and well-being. It states:

We need your support and ideas to develop a comprehensive plan that will help set and achieve our vision for mental health in 2035. We have chosen, in consultation with stakeholders and people with lived experience, to focus our questions on 6 key areas. These are:

How can we all promote positive mental wellbeing?
How can we all prevent the onset of mental health conditions?
How can we all intervene earlier when people need support with their mental health?
How can we improve the quality and effectiveness of treatment for mental health?
How can we all support people with mental health conditions to live well?
How can we all improve support for people in crisis?

The call for evidence is open until 7 July 2022, and responses to the questions in the call for evidence can be submitted here.

Call for Carers

Neil and fellow researchers at the University of Manchester are seeking to understand the experiences of people supporting a family member to live at home with dementia during the pandemic. The study is taking place across the UK, and you do not have to live with the family member to complete the survey. If you are in this position, they would love to hear from you, or if you are in a position to help to find respondents, that would be enormously helpful.

The survey is available online or in paper format – the online link is here, and they would be very grateful if you could circulate to relevant individuals and networks or post to your social media. If you have a group where paper copies would be better, please contact Jayne Astbury on jayne.astbury@manchester.ac.uk or telephone 07385 463 137 for delivery of a stack of surveys.

The survey is expected to take about 30-45 minutes to complete and will remain open until 30 June 2022.

Easy Read Human Rights Postcards

The BIHR has produced a series of Easy Read Human Rights Postcards. The postcards, created jointly with Warrington Speak Up and Photosymbols, have been produced to *'help people with learning disabilities understand what rights they have and how their rights work. The postcards talk about real life stories of where rights have or have not been looked after.'* The postcards cover:

The right to life
The right to be safe from serious harm
The right to liberty
The right to respect for private and family life, home and contact
The right to be treated fairly

The cards can be downloaded from the BIHR website, or can be ordered.

Supreme Court refuses permission in *Bell v Tavistock and Portman NHS Foundation Trust*

The Supreme Court has refused Quincy Bell's application for permission to appeal in the matter of *Bell v Tavistock*. Bell's legal team sought to argue that the Court of Appeal in Tavistock v Bell had misinterpreted and/or misapplied *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112. The Supreme Court refused the application on the basis it raised no arguable point of law.

'MARSIPAN' replaced by 'MEED'

The Royal College of Psychiatrists has released 'Medical Emergencies in Eating Disorders: Guidance on Recognition and Management' (MEED), which replaces the former guidance documents, 'Management of Really Sick Patients with Anorexia Nervosa' (MARSIPAN) and the 'Junior MARSIPAN' guidance. Key recommendations include:

1. Medical and psychiatric ward staff need to be aware that patients with eating disorders being admitted to a medical or paediatric ward may be at high risk despite appearing well and having normal blood parameters.

2. The role of the primary care team is to monitor patients with eating disorders, refer them early and provide monitoring after discharge, in collaboration with medical services and EDSs (including community EDSs). Eating disorders are covered, in England, by the term severe mental illness9 and physical checks in primary care should be performed,10 even if under specialist outpatient care. Patients with eating disorders not presenting in an emergency may nevertheless require urgent referral.

3. Physical risk assessment in primary and secondary settings should include nutritional status (including current intake), disordered eating behaviours, physical examination, blood tests and electrocardiography.

4. Assessment measures (such as body mass index [BMI] or blood pressure [BP]) for patients under 18 years must be age-adjusted.

5. Where specialist eating disorder unit (SEDU) beds are not available, general psychiatric units should be supported to provide specialist eating disorder care. This will require input from liaison psychiatry and EDSs, so that patients can be transferred safely without delay when discharge from a medical bed is appropriate.

6. Patients who require admission to medical or paediatric wards should be treated by a team with experience of treating eating disorders and involving their carers, using protocols developed in collaboration with eating disorder specialists, and having staff trained to implement them.

7. The inpatient team on the medical/paediatric unit should include (at least) a lead physician/paediatrician, a dietitian with specialist knowledge of eating disorders and a lead nurse. An eating disorders or liaison psychiatry service should provide sufficient support and training to medical/paediatric wards to allow them to manage eating disorder patients. Around this core team for each individual patient, key professionals should be added who are involved with or knowledgeable about a patient and their illnesses, needs and community care plans (e.g. nurses, therapists or psychiatrists from EDSs or community mental health teams, or diabetes team professionals), forming a multi-agency group to guide the admission and subsequent care.

8. Responsibilities of the inpatient teams are:

• Medical team:

o safely refeed the patient

o avoid refeeding syndrome caused by too rapid refeeding o avoid underfeeding syndrome caused by too cautious refeeding

o manage fluid and electrolyte problems, often caused by purging behaviours

o arrange discharge, in agreement with the mental health team and commissioners, to eating disorders community care or intensive treatment (e.g. day care or specialist inpatient care) as soon as possible once such treatment is safe and indicated

o for patients with complex problems (e.g. eating disorder and emotionally unstable personality disorder or autism spectrum disorder) consult with psychiatric experts to decide on further management.

• Mental health team:

o manage, in collaboration with the medical team, the behavioural problems common in patients with eating disorders

o occasionally assess and treat patients under compulsion using relevant mental health legislation

o address family concerns and involve both patients and their families in discussions about treatment

o advise on appropriate onward care following medical stabilisation.

9. Health commissioners (clinical commissioning groups and national commissioners) should:

• be aware of the local provision for severely ill patients with eating disorders

• ensure that robust plans are in place, including adequately trained and resourced medical, nursing and dietetic staff on the acute services, and specialist eating disorders staff in mental health services

• support the establishment of intensive community treatment, including outpatient and day patient services for both young people and adults.

10. Job plans for consultants in eating disorders and liaison psychiatry should allow a session for training professionals in paediatric and medical wards.

11. Units treating patients with eating disorders join peer review networks and participate in audit and quality improvement activity.

12. Knowledge and training about the content of this guidance should be required for all frontline staff.

Mental Health Act Reform: The Queen's Speech

In the Queen's Speech on 10 May 2022, it was announced that draft legislation would be brought forward to reform the Mental Health Act in England & Wales. The background notes to the Queen's Speech provide in relevant part as follows:

The purpose of the draft Bill is to:

- *Ensure patients suffering from mental health conditions have greater control over their treatment and receive the dignity and respect they deserve.*
- *Make it easier for people with learning disabilities and autism to be discharged from hospital.*

The main benefits of the draft Bill would be:

- *Modernising the Act so that it is fit for the 21st century and provides a framework for services in which people experiencing the most serious mental health conditions can receive more personalised care, with more choice and influence over their treatment and a greater focus on recovery.*
- *Helping to address the existing disparities in the use of the Act for people from ethnic minority backgrounds – especially for detentions and for the use of Community Treatment Orders.*
- *Ensuring that detentions only happen where strictly necessary.*
- *Improving how we support offenders with acute mental health needs, ensuring they have access to the right treatment, in the right setting, at the right time – with faster transfers from prison to hospital, and new powers to discharge patients into the community while ensuring the public is protected.*

The main elements of the draft Bill are:

- *Amending the definition of mental disorder so that people can no longer be detained solely because they have a learning disability or because they are autistic.*
- *Changing the criteria needed to detain people, so that the Act is only used where strictly necessary: where the person is a genuine risk to their own safety or that of others, and where there is a clear therapeutic benefit.*
- *Giving patients better support, including offering everyone the option of an independent mental health advocate, and allowing patients to choose their own 'nominated person', rather than have a 'nearest relative' assigned for them.*
- *Introducing a 28-day time-limit for transfers from prison to hospital for acutely ill prisoners and ending the temporary use of prison for those awaiting assessment or treatment.*
- *Introducing a new form of supervised community discharge. This will allow the discharge of restricted patients into the community, with the necessary care and supervision to adequately and appropriately manage their risk.*
- *Increasing the frequency with which patients can make appeals to Tribunals on their detention and provide Tribunals with a power to recommend that aftercare services are put in place.*
- *Introducing a statutory care and treatment plan for all patients in detention. This will be written with the patient and will set out a clear pathway to discharge.*

It has been some considerable time since Sir Simon Wessely's review reported, and much has happened in the interim with the potential to derail legislation. There remains the potential for derailment still, but the commitment in the Queen's Speech is very significant.

The White Paper published in response to the Review's recommendation adopted the vast majority of the Review's recommendations. Many will no doubt be parsing these background notes carefully to get a better sense of what may be in the draft legislation as it moves forward. One obvious omission is any reference to placing the ability to make advance choice documents on a statutory footing, which many will be looking for. However, until the draft legislation is published, it is not possible to say whether this is because this is not been taking forward – which would surprising given how central a part this played in the thinking of the Review – or whether the government are going to tackle the question in a different fashion.

Coronarivus and care home deaths: High Court declared two polices unlawful

R(Gardner and Others) v Secretary of State for Health and Social Care [2022] EWHC 967 (Admin) (27 April 2022) (Bean LJ, Graham J)

Other proceedings – Judicial Review

Summary

In *R (Gardner and Others) v Secretary of State for Health and Social Care & Other* [2022] EWHC 967, Bean LJ and Graham J considered the Claimants' challenge to certain policies relating to the discharge of hospital patients into care homes during the coronavirus pandemic. The Claimants both lost their fathers due to contracting COVID-19 in their respective care homes in April and May 2020 (two of the approximately 20,000 care home residents who died during the first wave of the pandemic). The focus of the claim was an alleged breach of Article 2 of the European Convention on Human Rights ("ECHR"), the right to life, and other grounds were raised on the basis of public law illegality.

The four policies under challenge were:

1. *"Guidance: Coronavirus (COVID-19) - Guidance on Residential Care Provision",* dated 13 March 2020 (the "March PHE Policy").
2. *"Next Steps on NHS Response to COVID-19"*, dated 17 March 2020 *and "COVID-19 Hospital Discharge Service Requirements"*, dated 19 March 2020 (the *"March Discharge Policy"*) and maintained until 15 April 2020.
3. *"Admission and Care of Patients During COVID-19 Incident in a Care Home"*, dated 2 April 2020 (the "April Admissions Guidance").
4. *"COVID-19: Our Action Plan for Adult Social Care"*, dated 15 April 2020 (the "April Action Plan").

The Claimants' main arguments were:

1. The effect of the March PHE Policy was to *"seed"* infection into care homes at a time when the government had considered community transmission had been occurring for two weeks (para 7). The policy did not address: (i) the risk from visitors to care homes, particularly from those who were asymptomatic, or (ii) the risk of transmission from other residents, especially those who had been newly admitted or re-admitted. The policy increased the risk of transmission from staff, because it stated that if neither the worker nor the individual had symptoms, then no Personal Protective Equipment ("PPE") was required. The Defendants submitted (*inter alia)* that (i) at that point in time, their understanding was that transmission occurred from symptomatic individuals; and, (ii) there were concerns about *"potential physical and emotional impacts on residents and their families"* if visits were completely restricted (para 10).
2. The March Discharge Policy directed, according to the Claimants, the *"mass discharge of hospital patients into care homes without testing, isolation, appropriate guidance in relation to PPE or assessment of whether the care home could provide safe care"* (para 13). The policy prioritised freeing up hospital beds but failed to consider the risk to care home residents. The failure to provide or recommend isolation could not be justified – by this time, the Government's household isolation policy required a person to self-isolate for 14 days if they had had contact with a positive case of COVID-19. The Defendants argued that the decision to discharge patients

were made on the basis of the individual assessments of clinicians (working with local authorities). The policy aim of freeing up NHS capacity for the most severe cases was unimpeachable and vital (para 15). Furthermore, only four weeks later, a policy of testing and isolation for discharges was introduced.

3. In relation to the April Admission guidance, the Claimants argued that it failed to protect care home residents; and continued to prioritise freeing up hospital beds. Negative tests were still not required; staff were only required to wear PPE were caring for residents with symptoms. The Defendants repeated the same arguments as above regarding testing, isolation, hospital beds and asymptomatic individuals. There was increased access to tests for staff during April. It was not possible to stop staff moving between care homes, otherwise it could have led to significant staff shortages.

4. The Claimants submitted that, through the April Action Plan, the Government started to reverse its earlier policies. In particular, it established a new policy requiring that all patients discharged from hospital to care homes were tested. Whilst waiting for a test result, the patient should be isolated. For individuals from the community, the policy advised isolation for 14 days. The Claimants argued that the measures were not sufficient to protect care home residents, including that testing was not implemented immediately and it did not mandate the isolation period.

In relation to Article 2, the Claimants argued that the Defendant had breached both their "systems duty" and "operational duty" during the first wave of the pandemic (para 152). The systems duty required the Defendant to put in place a legislative and administrative framework to protect risks to life, whilst the operational duty required the State to take practical steps to safeguard people's right to life from specific dangers in circumstances where there is a link to the State's responsibility. The Claimants sought a declaration of breach of Article 2.

In terms of public law illegality, it was alleged *inter alia* that the Defendants had failed to take into account relevant considerations. The Claimants argued in particular (paras 169-176):

1. There had been a failure to assess the risk to lives of care home residents caused by the Discharge Policy and Aprils Admission Guidance and to weigh that risk against that the perceived benefits of the policies;

2. No consideration was given to amending the testing priority policy to include discharges from hospitals and to provide tests on discharges (where capacity allowed);

3. There was a failure to consider the likelihood of the risk of transmission from the asymptomatic until some point in mid-April 2020; and the precautionary principle was obviously relevant.

The claimants further argued that "*to introduce household isolation, school closures and the national lockdown but at the same time proceed on a symptoms-based approach for care homes*" was irrational (para 176).

The court dismissed the allegations of breach of Article 2. There was no arguable breach of the systems duty – there was nothing wrong with the framework for the issuing of guidance or policy documents

by the Defendants (nor with the allocation of responsibilities between them) (para 227). The complaint was in relation to the content of the policy documents. In relation to the operational duty, the court held that there was no Strasbourg authority that had gone as far as holding a member state under an obligation to take all reasonable steps to avoid the real and immediate risk to life posed by an epidemic or pandemic to as broad and undefined a sector of the populations as residents for care homes for the elderly (para 252).

In terms of public law illegality, the criticisms of the Government's policy prior to patients entering a care home were dismissed as hopeless, but the court was interested in the separate question of how those discharged *"should have been treated and cared for"* (para 285). The court upheld part of the claim and determined that the policy, set out in the March Discharge Policy and April Admissions Guidance documents, was irrational in failing to advise that where an asymptomatic patient (other than one who had tested negative) was admitted to a care home, he or she should, so far as practicable, be kept apart from other residents for 14 days (para 298). The Secretary of State had failed to take into account the highly relevant consideration of the risk to elderly and vulnerable residents from asymptomatic transmission, even though there was growing awareness of the risk of asymptomatic transmission (para 287). This was not a matter of political judgement on a finely balanced issue.

Comment

This was a judicial review claim – the court was therefore concerned with the lawfulness of the Government's policy set out in the documents detailed above. It was not an inquest into the deaths of the Claimants' fathers nor was it a public inquiry. As readers may be aware, the Rt Hon Baroness Hallett DBE has been appointed to chair a public inquiry under the Inquiries Act 2005 to consider the UK's preparedness for and response to the COVID-19 pandemic and to learn lessons for the future. The inquiry will provide an opportunity for more extensive consideration to the documents, as well as oral and written testimony on the issues raised in this case: the draft terms of reference include an inquiry into: "*the management of the pandemic in care homes and other care settings, including infection prevention and control, the transfer of residents to or from homes, treatment and care of residents, restrictions on visiting, and changes to inspections*".

Brain-stem death: the Northern Irish courts weigh in

A Health and Social Care Trust v RL & Anor [2022] NIFam 17 (03 May 2022)

Summary

A further case concerning brain-stem death and removal of ventilation has come before the High Court in Northern Ireland. RL was 21 years old, and a foreign national who had been living in Northern Ireland. The judgment does not identify his country of origin (FC), but notes that his parents continue to live there.

RL suffered a severe anaphylactic shock to an unknown allergen, and suffered cardiac arrest. Having failed to show any neurological improvement, an MRI was undertaken a week later which showed changes secondary to global hypoxic injury. The opinion of his treating team was that brain stem death had occurred, and this was confirmed in testing in accordance with the 2008 Code of Practice issued

by the Academy of Medical Royal Colleges. This ruled out repatriation to a hospital in FC, but a hospice there was prepared to accept him as was a facility run by an expert instructed by his parents. The parents' expert, Professor EF, did 'not accept the concept of brain-stem death' and gave evidence that he had 'awakened about 1000 patients from cerebral coma, including patients considered to be dead' (para 12).

The treating Trust applied to court for declarations that death had occurred and that it was lawful to cease ventilation, which were granted.

Comment

The tragic circumstances of this case recall those of *Re A* [2015] EWHC 443 and *Re M* [2020] EWCA Civ 164. The court reiterated the approach in cases of this kind set out by the Court of Appeal in *Re M*: brain stem death is the established legal criteria in the United Kingdom, as represented by the 2008 Code and 2015 guidance published by the UK Royal College of Paediatrics and Child Health. The case thus stands as a helpful restatement of those principles, and includes an interesting discussion of the working of the civil standard of proof in cases where the court is faced with a binary decision about whether a person is dead.

The judgment is extremely critical of Professor EF, noting that it is not the first time he has given evidence in the courts of Northern Ireland, and recording the comments made by O'Hara J in the previous case of *Re M* [2014] NIFam 3 to the effect that 'his contribution has given a distressed, grieving family false hope where there really is none' (para 46). In this case, the judge's view was that 'Professor EF has only added to their grief by potentially raising a totally unrealistic and false hope' (para 48). The case is a reminder of the importance, and the potential human consequences, of the role played by experts.

Bipolar and advance decision-making, 'Future Selves'

A new publication written by artist Beth Hopkins, and coordinated by the Bethlem Gallery as part of the Mental Health and Justice Project, is now available to buy or download. The book is a collection of accounts of discussions between people with experience of bipolar (accompanied by works drawing out the discussions in visual form). It addresses issues raised by advance decision-making, and forms part of research led by the artist which interrogates themes of agency, control and care, and ultimately, our human rights. She asks the questions 'Should the right to make our own decisions ever be taken away?' and 'What decisions would you make for your future self?'
For more details, see the Bethlem Gallery's blogpost here.
Alex Ruck Keene

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SCOTLAND

World Congress, 7-9 June 2022

Registrations are still open for the 7th World Congress on Adult Capacity, Edinburgh International Conference Centre, 7-9 June 2022. The full Congress programme is now available at www.wcac2022.org. Keep checking it for further adjustments and updates. That link can also be used to register. The Congress is a "must" for all practitioners in the field, with a unique opportunity to enjoy in Scotland, and for only the second time in Europe, a major learning experience towards meeting fundamental demands and challenges to the essence of being a lawyer. The UN Convention on the Rights of Persons with Disabilities challenges us all to ensure that the full rights and status of people with disabilities are respected and made real for them, not only in the ringing declarations of international instruments and the polished language of laws, practices and procedures, but in the lives and experience of them, and of those who love them, care for them, and seek to serve them in professional or voluntary roles. That is the greatest challenge facing all of us, though for this Congress delegates from over 30 countries across six continents have in many cases overcome exceptional challenges to attend, and the organisers have faced a journey through challenges unforeseen when Scotland was accorded the honour of hosting this leading world event in the smallest country yet to do so.

Preparation of the Final Report of the Scott Review into mental health and incapacity law has been timed to take full advantage of the Congress, with the current consultation process ending a fortnight before the event. There will be active participation and a dedicated presentation from the Review Team. Participation in plenary events includes Lord Scott, balanced by HHJ Carolyn Hilder (Senior Judge at the Court of Protection), Ministers from both Scottish and UK Governments, and many world-leading figures, as well as representation of lived experience.

The organisers are grateful to all sponsors, led by the Law Society of Scotland as Gold Sponsor, for their contributions, and to UK Government for their support, without all of which the event would not happen – particularly in current stringent times. They are also most grateful to Alzheimer Scotland for funding and facilitating the attendance of people with relevant lived experience, and their carers. Everyone who registers for the event can not only expect so much personal and professional benefit, but is making their own contribution towards the viability of hosting an event when "the world comes to Scotland" to share the universal challenge of delivering on fundamental rights of all people, in all places, and in all circumstances.

Certificates for CPD purposes are available for those who request them.

Register now to avoid disappointment.

Adrian D Ward

Lord Scott and the Scott Review

We are delighted to congratulate John Scott QC, Solicitor Advocate, on his appointment as a Senator of the College of Justice, meaning (for readers who are not Scots lawyers) that he is now a judge of the High Court of Justiciary in criminal matters, and the Court of Session in civil matters. It adds to our delight that upon taking up this appointment he obtained special permission to continue his existing

role as Chair of the Scottish Mental Health Law Review through his significant role at the World Congress (see preceding item) to publication of the Final Report of the Review, due in September 2022.

The current consultation period on the work so far of the Review ends on 27th May 2022. All those who feel that they might have something to contribute to the Review process, even if only on one of the several questions posed at the end of each chapter of the consultation document, should respond by the deadline. This is a once-in-a-generation opportunity to influence the future shape of the wide areas of mental health, adults with incapacity, and adult support and protection law, with anticipated shifts towards a firmly human rights basis for assessing and meeting needs, embodied in processes of human rights enablement linked, for purposes of relevant assessments, to an autonomous decision-making assessment; with better coordination of the current different regimes by a process of alignment and possibly fusion of legislation, and possible acceptance and implementation of the case made by the Law Society of Scotland in 2016 for a single unified tribunal dealing with all relevant jurisdictions in a coordinated way, with unified standards, procedures and specialist expertise across Scotland, and competence to make disposals or issue orders under any of the current jurisdictions in a matter brought before the tribunal in any one of those jurisdictions.

Crucially, the aspirations of the Review will be essentially dependent upon government remedying its current under-funding of minimum necessary provision to meet human rights standards (which has led, for example, to a reduction by more than one half of mental health officer capacity in relation to needs) and remedying its own long-standing violations of its existing human rights obligations (such as failure to put in place an appropriate procedure to regulate deprivations of liberty in terms of Article 5 of the European Convention on Human Rights). The Report of the Review is likely to be only one step along the road to implementation of reforms. For example, unlike Scottish Law Commission reports in this area, it is not intended that it should include draft legislation. However, it is to be anticipated that the Report may highlight matters of particular urgency for reform.

All of the foregoing is tentative, dependent upon the Review Team's assessment of responses to the consultation, testing of its ideas at the World Congress, and ongoing work (which may include further targeted consultations) thereafter.

Adrian D Ward

New Sheriff Principal, new Practice Note

We congratulate Sheriff Nigel Ross on his appointment as Sheriff Principal of the Sheriffdom of Lothian and Borders, following upon the retirement of Sheriff Principal Mhairi Stephen. He took up appointment from 2nd May 2022, but at least some phasing in the handover is indicated by the issue on 3rd May 2022 by Sheriff Principal Stephen of a new Practice Note for AWI cases in Edinburgh Sheriff Court, though it was actually dated 26th April 2022, applying to all applications under the 2000 Act for guardianship and intervention orders, and all Minutes for renewal and/or variation of guardianship orders and for appointment of additional or replacement guardians, at Edinburgh Sheriff Court on and after 3rd May 2022. Subject to stated exceptions, it applies to counter-proposals for appointments made by way of craves included in Answers. The Practice Note in effect consolidates and updates good practice, and can be used as a checklist. Notable in particular is that it expands on the requirement in section 1(4)(a) of the 2000 Act to take account of the present and past wishes and feelings of the adult "so far as they can be ascertained by any means of communication", to take account of applicable human rights standards, such as those derived from Article 6 of the European Convention on Human Rights, the

requirement for support for the exercise of legal capacity in Article 12(3) of the UN Convention on the Rights of Persons with Disabilities, and a requirement for respect for *inter alia* the adult's will and preferences in terms of Article 12.4 of that Convention. In consequence, in terms of paragraph 3(k) of the guidance: "*The application must include averments as to the present and past wishes and feelings of the adult about any order sought and the powers requested so far as they can be ascertained. If it is not possible to ascertain them, the application must include averments (1) as to why this is not possible and (2) as to the steps taken, if any, (including any assistance and/or support provided) with a view to ascertaining them*". Under section 1 of the 2000 Act the sheriff is obliged to be satisfied as to due compliance with the principles in section 1 in relation to any intervention, as "*the person responsible for authorising or effecting the intervention, regardless of what might be averred or produced*". In consequence, one trusts that sheriffs will be vigilant in ensuring full compliance with paragraph 3(k).

Adrian D Ward

Routes of appeal clarified

In the June 2021 Scotland section, we reported the decision of the Sheriff Appeal Court in *JK (Respondent & Appellant) v Argyll and Bute Council (Applicant & Respondent)*. In that case the court addressed fundamental questions as to whether powers can be granted to a welfare guardian under the Adults with Incapacity (Scotland) Act 2000 ("the 2000 Act") 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. On 29th April 2022, an Extra Division of the Inner House of the Court of Session rejected an application for leave to appeal to the Court of Session, the Sheriff Appeal Court having refused the applicant's appeal, and the applicant's subsequent application for leave to appeal to the Court of Session. The applicant sought leave direct from the Court of Session. The question arose as to whether she could competently do so.

The applicant referred to two potential routes for appeal. Under section 2 of the 2000 Act, unless otherwise expressly provided for, decisions of the sheriff under the 2000 Act might be appealed to the Sheriff Principal, whose decision could with leave of the Sheriff Principal be appealed to the Court of Session. It was not open to appellants to seek leave from the Court of Session.

The Courts Reform (Scotland) Act 2014 ("the 2014 Act") transferred the appellate jurisdiction of the Sheriff Principal to the Sheriff Appeal Court. Section 113 of the 2014 Act provides for appeal from a decision of the Sheriff Appeal Court constituting final judgment in civil proceedings with the permission of the Sheriff Appeal Court, or, if that court refuses permission, with the permission of the Court of Session. So, did the limitation in section 2 of the 2000 Act still apply, or had it been superseded by section 113 of the 2014 Act?

The Court of Session decided the matter by reference to the further provisions in subsections (3) and (4) of section 113 of the 2014 Act. Section 113(3) provides that section 113 "does not affect any other right of appeal against any decision of the Sheriff Appeal Court to the Court of Session under any other enactment", and, crucially, section 113(4) provides that section 113 "is subject to any provision of any other enactment that restricts or excludes a right of appeal from the Sheriff Appeal Court to the Court of Session". The 2000 Act excluded appeal to the Court of Session except where the Sheriff Principal had granted leave. The role of the Sheriff Principal had transferred to the Sheriff Appeal Court.

Accordingly, appeals from the Sheriff Appeal Court to the Court of Session require the leave of the Sheriff Appeal Court, and if that is refused it is not competent to seek leave from the Court of Session.

Adrian D Ward

PKM Litigation

In previous Reports we undertook to keep readers updated on the progress of the litigation between PKM's Guardians and Greater Glasgow Health Board (see the Scotland sections in December 2021, February 2022 and March 2022). We last reported that at a hearing in Dumbarton Sheriff Court on 24th February a proof before answer was ordered. Given the "life-or-death" urgency of this litigation, it is surprising that this case has yet to be decided, and is apparently not being case managed on a tight timescale. The proof before answer is due to proceed on 17th and 20th June, and 14th July, 2022. There was due to be a pre-proof hearing on 18th May 2022 to address procedural matters. PKM himself is still not represented, though one of the parties is his safeguarder. We understand, however, that he is listed as a witness by one of the parties, but that this is opposed by another. We shall of course report the final disposal, and any significant information that becomes available in the meantime.

Adrian D Ward

Guardians' Remuneration

We have also been following in recent issues the topic of professional guardians' remuneration, and the establishment by Fiona Brown, Public Guardian, of an "Uplifts Working Group". For members of the Group and their contact details, see the Scotland section of the April Report. We are grateful to Fiona Brown for providing the following further information on the work of the group and permitting us to publish it.

At the first meeting of the group in March, the group:

- Agreed the remit of the group;
- Listed and agreed the current frustrations with the remuneration and uplift process;
- Agreed common situations where more time is spent in guardianship cases e.g. excessive calls/visits from the Adult/Family, visits to HP etc.;
- Agreed the improvements required to ensure ease for both OPG staff and Professional Guardians i.e. a Pro-Forma Application;
- Adjusted the list of "routine functions" listed on the current OPG guidance document;

The routine functions were updated, the annual increase in scale remuneration was applied, and a first draft Application was shared.

At the second meeting in April, the group:

- Reviewed and offered feedback on the draft Application, and agreed that guidance be inserted in the actual application, rather than having a separate document;
- Considered the timing and method for submitting an Application;
- Discussed the possibility of being able to withdraw uplift amounts, the following reporting year, if funds were not available in the year in respect of which the uplifts were allowed;
- Discussed the rate of uplift e.g. a set %, professional hourly rate up to a capped amount, or a set OPG uplift hourly rate for all (options being tested with live cases before the next meeting);
- The costs and options re insurance and visits on vacant property, as this is costly to estates and time consuming for professionals (Marsh/Aviva offer a product for Estate Managers, which Professional Guardians can use, where excessive visits are not required);
- Discussed how professional guardians could share best practice.

We understand that the group is next due to meet on 16 June 2022, with the intention that it assess the options around rates for uplift, and again consider a draft Application Form (with guidance inserted).

The total timescale for the work of the group has not yet been fixed.

Addressing two major deficiencies in Scots law

A report drafted by a cross-committee Working Group was published by the Law Society of Scotland on 20th May 2022, addressing two areas of major deficiency in Scots law. See Human rights must be at the core of proposals for law reform around advance choices and medical decision making | Law Society of Scotland (lawscot.org.uk)

The Working Group comprised members drawn from various committees of the Law Society of Scotland and an external expert, and included legal and medical practitioners, academic lawyers, and an English barrister. The aim of the project was to consider and address current deficiencies in Scots law in relation to (a) advance choices (in the original remit described as advance directives), and (b) medical decision-making in intensive care situations. The report demonstrates the need for Scots law adequately to address those deficiencies, and without proposing draft legislation it nevertheless offers clear proposals for the content of appropriate legislative provision, and related matters.

The report narrates that the problems resulting from those deficiencies were exacerbated during the pandemic with advice and encouragement based on the law of England & Wales, which is different, and which does cover some aspects to a greater (albeit still limited) extent than Scots law. Critically, many medical practitioners in Scotland do not understand the legal position when they have to make medical decisions in intensive care situations, and it is not possible to obtain informed consent from the patient (or a guardian or attorney representing the patient). They do not understand that they do not have the legal protections available to colleagues in England & Wales if they act properly in the circumstances, but "get it wrong". The report offers for the first time a legal framework. It draws on the principle of *negotiorum gestio*, traditionally seen as regulating a situation in which the gestor steps in to act on behalf of an adult who is capable but absent and cannot be contacted for instructions, to situations where the adult is not physically absent but in consequence of medical emergency is "absent" in the sense of being unable to hear and respond to explanations and offers of treatment.

Members of the public have been encouraged to make "advance directives", but there is no statutory provision for them in Scotland, nor is the law clear about how to ensure maximum effectiveness of

decisions that they might wish to make in advance of incapacity. Such decisions can cover a wide range of matters, such as what to do with the house and contents, where they would (and would not) wish to be placed in a care home, what to do with a pet they can no longer look after, and so on – as well as medical matters, but going far beyond medical matters. The significant characteristic of "advance choices", as the report calls them, is that people make their own decision in advance. They do not entrust decisions to someone else such as an attorney (and they may want to cover the situation where there is no-one whom they would wish to appoint as attorney, or there is no longer a chosen attorney able to act).

In accordance with relevant human rights instruments, advance choices can cover either "instructions given" or "wishes made", or both. Provision in Scots law for both types is necessary to comply with modern human rights requirements. Sometimes circumstances can change between when an advance choice is issued, and the later date when it becomes operational. The report offers precise criteria for addressing such situations.

The report lists the questions which the Working Group formulated, drawn largely but not entirely from the provisions of Council of Europe Recommendation (2009)11 on advance directives and powers of attorney and work following upon that Recommendation, and provides the answers offered to those questions. At 33 pages the report itself is relatively succinct, but nevertheless covers ground that will be largely novel to many Scots lawyers. A wealth of detail is contained in six Annexes to the report, accessible online by links in the report, and authored by various members of the Working Group.

The work of the Group, and the need to take forward provision on advance directives/advance choices, has already attracted international attention. See for example the response of the European Law Institute to the European Commission's public consultation on the Initiative on the Cross-border Protection of Vulnerable Adults (April 2022), and in particular the section on "Promotion of the use of advance directives" commencing on page 15, available at: https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Response_Protection_of_Adults.pdf. There have been suggestions that the Institute might undertake work to prepare suggested European model laws on advance directives/advance choices.

Adrian D Ward

Declarations

Readers should note that Prof. Jill Stavert is a member of the Review Team for the Scott Review. She and Adrian Ward are both members of the organising committee for the World Congress on Adult Capacity, Jill with responsibility for the academic programme and Adrian as President. Both (along with Alex Ruck Keene, currently on sabbatical leave from his role as General Editor of the Mental Capacity Report) were members of the Working Group that issued the report described in the last item above. Adrian was one of the authors of the ELI report mentioned above.

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Victoria regularly appears in the Court of Protection, instructed by the Official Solicitor, family members, and statutory bodies, in welfare, financial and medical cases. Together with Alex, she co-edits the Court of Protection Law Reports for Jordans. She is a 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.

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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.

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Arianna has a specialist practice in mental capacity, community care, mental health law and inquests. Arianna acts in a range of 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.

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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 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.

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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 and Seminars

Physical restraint and PBS plans in the Court of Protection, 26 May 2022, 5:00-7:00PM

Victoria Butler-Cole QC and Dr Theresa Joyce will be holding a seminar (chaired by Senior Judge Hilder) on their recent paper to assist legal professionals and judges in understanding and responding to PBS plans that include the use of physical restraint against people with learning disabilities. There will be an opportunity for questions and discussion. Questions can be sent in advance to marketing@39essex.com or during the seminar using Zoom's Q&A function. People can attend either remotely or in person, and can find full details (including how to register) here.

Forthcoming Training Courses

Neil Allen will be running the following series of training courses:

17 June 2022	DoLS refresher for mental health assessors (half-day)
14 July 2022	BIA/DoLS legal update (full-day)
15 July 2022	Necessity and Proportionality Training (9:30-12:30)
15 July 2022	Necessity and Proportionality Training (13:30-16:30)
16 September 2022	BIA/DoLS legal update (full-day)

To book for an organisation or individual, further details are available here or you can email Neil.

7th World Congress on Adult Capacity, Edinburgh International Conference Centre [EICC], 7-9 June 2022 The world is coming to Edinburgh – for this live, in-person, event. A must for everyone throughout the British Isles with an interest in mental capacity/incapacity and related topics, from a wide range of angles; with live contributions from leading experts from 29 countries across five continents, including many UK leaders in the field. For details as they develop, go to www.wcac2022.org. Of particular interest is likely to be the section on "Programme": including scrolling down from "Programme" to click on "Plenary Sessions" to see all of those who so far have committed to speak at those sessions. To avoid disappointment, register now at "Registration". An early bird price is available until 11th April 2022.

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.

Conferences (continued)

The Judging Values and Participation in Mental Capacity Law Conference

The *Judging Values in Participation and Mental Capacity Law* Project conference will be held at the British Academy (10-11 Carlton House Terrace, London SW1Y 5AH), on **Monday 20th June 2022 between 9.00am-5.30pm**. It will feature panel speakers including Former President of the Supreme Court Baroness Brenda Hale of Richmond, Former High Court Judge Sir Mark Hedley, Former Senior Judge of the Court of Protection Denzil Lush, Former District Judge of the Court of Protection Margaret Glentworth, Victoria Butler-Cole QC (39 Essex Chambers), and Alex Ruck Keene (39 Essex Chambers, King's College London). The conference fee is £25 (including lunch and a reception). If you would like to attend please register on our events page here by 1 June 2022. If you have any queries please contact the Project Lead, Dr Camillia Kong.

Essex Autonomy Project Summer School 2022

Early Registration for the 2022 Autonomy Summer School (*Social Care and Human Rights*), to be held between 27 and 29 July 2022, closes on 20 April. To register, visit the Summer School page on the Autonomy Project website and follow the registration link.

Programme Update:

The programme for the Summer School is now beginning to come together. As well as three distinguished keynote speakers (Michael BACH, Peter BERESFORD and Victoria JOFFE), Wayne Martin and his team will be joined by a number of friends of the Autonomy Project who are directly involved in developing and delivering policy to advance human rights in care settings. These include (affiliations for identification purposes only):

> Arun CHOPRA, Medical Director, Mental Welfare Commission for Scotland

> Karen CHUMBLEY, Clinical Lead for End-of-Life Care, Suffolk and North-East Essex NHS Integrated Care System

> Caoimhe GLEESON, Programme Manager, National Office for Human Rights and Equality Policy, Health Service Executive, Republic of Ireland

> Patricia RICKARD-CLARKE, Chair of Safeguarding Ireland, Deputy Chair of Sage Advocacy

Planned Summer School Sessions Include:

> Speech and Language Therapy as a Human Rights Mechanism

> Complex Communication: Barriers, Facilitators and Ethical Considerations in Autism, Stroke and TBI

> Respect for Human Rights in End-of-Life Care Planning

> Enabling the Dignity of Risk in Everyday Practice

> Care, Consent and the Limits of Co-Production in Involuntary Settings

The 2022 Summer School will be held once again in person only, on the grounds of the Wivenhoe House Hotel and Conference Centre. The programme is designed to allow ample time for discussion and debate, and for the kind of interdisciplinary collaboration that has been the hallmark of past Autonomy Summer Schools. Questions should be addressed to: autonomy@essex.ac.uk.

Our next edition will be out in June. 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.

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