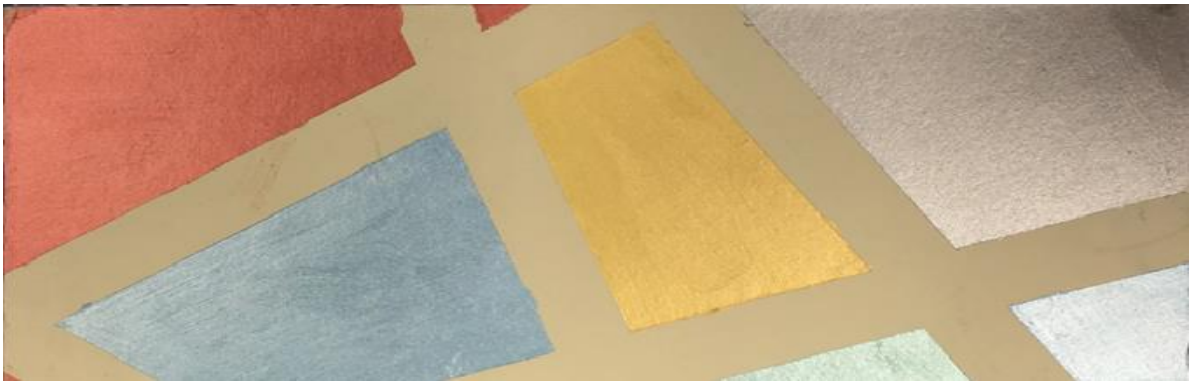
MENTAL CAPACITY REPORT: PRACTICE AND PROCEDURE

May 2022 | Issue 122



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.

Editors
Victoria Butler-Cole QC
Neil Allen
Nicola Kohn
Katie Scott
Arianna Kelly
Rachel Sullivan
Stephanie David
Nyasha Weinberg
Simon Edwards (P&A)

Scottish Contributors
Adrian Ward
Jill Stavert

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

Contents

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

Editors and contributors

Victoria Butler-Cole QC: vb@39essex.com

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

Neil Allen: neil.allen@39essex.com

Neil has particular interests in ECHR/CRPD human rights, mental health and incapacity law and mainly practises in the Court of Protection and Upper Tribunal. Also a Senior Lecturer at Manchester University and Clinical Lead of its Legal Advice Centre, he teaches students in these fields, and trains health, social care and legal professionals. When time permits, Neil publishes in academic books and journals and created the website www.lpslaw.co.uk. To view full CV click here.

Nicola Kohn: nicola.kohn@39essex.com

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

Katie Scott: katie.scott@39essex.com

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

Rachel Sullivan: rachel.sullivan@39essex.com

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

Stephanie David: stephanie.david@39essex.com

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

Arianna Kelly: arianna.kelly@39essex.com

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

Nyasha Weinberg: Nyasha.Weinberg@39essex.com

Nyasha has a practice across public and private law, has appeared in the Court of Protection and has a particular interest in health and human rights issues. To view a full CV, click here.

Simon Edwards: simon.edwards@39essex.com

Simon has wide experience of private client work raising capacity issues, including *Day v Harris & Ors* [2013] 3 WLR 1560, centred on the question whether Sir Malcolm Arnold had given manuscripts of his compositions to his children when in a desperate state or later when he was a patient of the Court of Protection. He has also acted in many cases where deputies or attorneys have misused P's assets. To view full CV click here.

Scotland editors

Adrian Ward: adw@tcyoung.co.uk

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

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

Jill Stavert is Professor of Law, Director of the Centre for Mental Health and Capacity Law and Director of Research, The Business School, Edinburgh Napier University. Jill is also a member of the Law Society for Scotland's Mental Health and Disability Sub-Committee. She has undertaken work for the Mental Welfare Commission for Scotland (including its 2015 updated guidance on Deprivation of Liberty). To view full CV click here.

Conferences 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.

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.

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

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

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

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

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

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

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

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

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