Mental Capacity Law Newsletter November 2014: Issue 51

Court of Protection: Practice and Procedure

ThirtyNine
ESSEX STREET

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Introduction

Welcome to the November Mental Capacity Law Newsletters. Highlights this month include:

(1) In the Health, Welfare and Deprivation of Liberty Newsletter: an update on judicial authorisations of deprivation of liberty and two difficult cases, one involving the MHA and the MCA, and the other capacity to consent and to contact;

(2) In the Property and Affairs Newsletter (this month edited by Kelly Stricklin-Coutinho): the first revocation of a digital LPA and an update on necessaries;

(3) In the Practice and Procedure Newsletter: fact-finding against the odds, the limits of the inherent jurisdiction, an escalation of the legal aid debate and the launch of Alex's guidance on litigation friends in the Court of Protection;

(4) In the Capacity outside the COP newsletter: an important case on capacity and s.117 MHA 1983, an update on the new approach adopted by CQC to the MCA 2005 and a round-up of recent guidance on the MCA 2005, as well as call for best practice documentation, new guidance on DNACPR notices, and the Committee on the Rights of Persons with Disabilities' statement on Article 14.

(5) In the Scotland Newsletter: the hotly anticipated Scottish Law Commission report on plugging the *Bournewood* gap, updates on the position relating to powers of attorney, an important case on testamentary capacity and undue influence, and updates on recent reports from the Mental Welfare Commission.

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Hyperlinks are included to judgments; if inactive, the judgment is likely to appear soon at www.mentalhealthlaw.co.uk.

Fact finding against the odds

A Local Authority v (1) M by his litigation friend the Official Solicitor (2) E (3) A [2014] EWCOP 33 (Baker J)

Practice and procedure – fact-finding

Summary

This is a mammoth judgment running to 92 pages following a hearing that lasted over 2 weeks. It has been reported predominantly for what Baker J said (or, rather was very careful not to say) about the MMR vaccine and any link with autism, but we do not focus upon that aspect here, not least because Baker J was at pains to say that the MMR vaccine had nothing to do with the case before him.

The case concerned M, a 24 year old man with autism and learning disabilities and charted the difficult relationship which developed between E (M's mother and health and welfare deputy) and the local authority from M's late teens and culminated in the local authority making an application to the COP. The local authority made a series of allegations against E's parenting of M which led to a lengthy fact finding hearing.

At paragraph 253, Baker J summarised the critical facts which had been established in the case as follows (253):

> *"M has autistic spectrum disorder. There is no evidence that his autism was caused by the MMR vaccination. His parents' account of an adverse reaction to that vaccination is fabricated. The mother has also given many other false accounts about M's health. He has never had meningitis, autistic enterocolitis, leaky gut syndrome, sensitivity to gluten or casein, disorder of the blood brain barrier, heavy metal poisoning, autonomic dysautonomia (which, in any event, is not recognised in any classification of medical conditions), rheumatoid arthritis or Lyme disease. As a result of E maintaining that he had these and other conditions, she has subjected M to numerous unnecessary tests and interventions. He did have a dental abscess for which E failed to obtain proper treatment and caused him 14 months of unnecessary pain and suffering. E has also insisted that M be subjected to a wholly unnecessary diet and regime of supplements. Through her abuse of her responsibility entrusted to her as M's deputy, she has controlled all aspects of his life, restricted access to him by a number of professionals and proved herself incapable of working with the local authority social workers and many members of the care staff at the various residential homes where M has lived. This behaviour amounts to factitious disorder imposed on another. In addition, E has a combination of personality disorders - a narcissistic personality disorder, histrionic personality disorder and elements of an emotional unstable personality disorder".*

The main focus of the case was the fact finding exercise (which led to the conclusions above) and the judgment contains a useful summary of the principles which should be applied to a fact finding hearing in the COP (at paragraphs 82 – 90). In short, Baker J held that the legal principles in the COP should be broadly the same as in children's proceedings where a court is investigating that a child has been ill-treated or neglected. Those principles have been summarised by Baker J in a number of cases including *Re JS* [2012] EWHC 1370 (Fam). The principles which were of particular importance in the instant case (and are likely to be of importance in the majority of COP cases) are set out here for ease of reference:

"83. First, the burden of proof lies with the local authority. It is the local authority that brings these proceedings and identifies the findings that they invite the court to make. Therefore, the burden of proving the allegations rests with them.

84. Secondly, the standard of proof is the balance of probabilities: Re B (Children) [2008] UKHR 35. If the local authority proves a fact on the balance of probabilities, this court will treat that fact as established and all future decisions concerning M's future will be based on that finding. Equally, if the local authority fails to prove any allegation, the court will disregard that allegation completely. In her written submissions on behalf of the local authority, Miss Bretherton contended that the court should apply the principle that

> *'the more serious the allegation the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it.'*

This principle, originally stated by Ungoed-Thomas J in Re Dellows Will Trust[1964] 1 WLR 451, was at one time applied by the courts considering allegations of child abuse in family proceedings under the Children Act 1989. In Re B, however, the House of Lords emphatically rejected that approach. Baroness Hale of Richmond, with whose judgment the other four Law Lords agreed, having analysed the case law, stated at paragraphs 70 to 72:

> *'70 I would announce loud and clear that the standard of proof in finding the facts necessary to establish the threshold under s.31(2) or the welfare considerations of the 1989 Act is the simple balance of probabilities - neither more nor less. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent probabilities are simply something to be taken into account, where relevant in deciding where the truth lies.*
>
> *71. As to the seriousness of the consequences, they are serious either way. A child may find her relationship with her family seriously disrupted or she may find herself still at risk of suffering serious harm. A parent may find his relationship with his child seriously disrupted or he may find himself still at liberty to maltreat this or other children in the future.*
>
> *72. As to the seriousness of the allegation, there is no logical or necessary connection between seriousness and probability.'*

In my judgment, the same approach must surely apply in the Court of Protection where the court is carrying out a similar exercise in determining the facts upon which to base decisions as to the best interests of an incapacitated adult.

85. Thirdly, findings of fact in these cases must be based on evidence. As Munby J (as he then was) observed in Re A (A Child: Fact-finding hearing: speculation) [2011] EWCA Civ 12:

> *'It is an elementary proposition that findings of fact must be based on evidence, including inferences that can properly be drawn from the evidence, and not on suspicion or speculation.'*

86. Fourth, the court must take into account all the evidence and, furthermore, consider each piece of evidence in the context of all the other evidence. As Dame Elizabeth Butler-

Sloss, President, observed in Re T [2004] EWCA Civ 458, [2005] 2 FLR 838, at paragraph 33:

> *"Evidence cannot be evaluated and assessed in separate compartments. A judge in these difficult cases must have regard to the relevance of each piece of evidence to the other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof."*

87. Fifth, whilst appropriate attention must be paid to the opinion of medical experts, those opinions need to be considered in the context of all the other evidence. The roles of the court and the experts are distinct. It is the court that is in the position to weigh up expert evidence against the other evidence: A County Council v. K, D and L [2005] EWHC 144 Fam, [2005] 1 FLR 851 per Charles J.

88. Sixth, in assessing the expert evidence, which involves a multi-disciplinary analysis of the medical information conducted by a group of specialists, each bringing their own expertise to bear on the problem, one important consideration - and of particular relevance in this case - is that the court must be careful to ensure that each expert keeps within the bounds of their own expertise and defers where appropriate to the expertise of others - see the observations of Eleanor King J in Re S [2009] EWHC 2115 Fam.

89. Seventh, the evidence of the parents is of the utmost importance. It is essential that the court forms a clear assessment of their credibility and reliability. They must have the fullest opportunity to take part in the hearing and the court is likely to place considerable weight on the evidence and impressions it forms of them - see Re W and another (Non-accidental injury) [2003] FCR 346.

90. Eighth, it is not uncommon for witnesses in these cases to tell lies, both before and during the hearing. The court must be careful to bear in mind that a witness may lie for many reasons - such as shame, misplaced loyalty, panic, fear and distress - and the fact that a witness has lied about some matters does not mean that he or she has lied about everything - see R v. Lucas [1981] QB 720. The assessment of the truthfulness is an important part of my function in this case".

Comment

This was a factually dense case with 35 lever arch files of evidence and 32 witnesses giving oral evidence. It was further complicated (and the case substantially lengthened) by the fact that E (M's mother) was acting in person. As he drily noted:

> *"One lesson of this case is that, if parties such as E and A are to be unrepresented in hearings of this kind, be it in the Court of Protection or in the Family Court, the hearings will often take very considerably longer than if they were represented. Denying legal aid in such cases is, thus, a false economy."*

Despite those factors, Baker J applied the principles set out above to make succinct findings of fact (see paragraph 253 quoted above). He set out in detail his assessment of each of the witnesses and the evidence as a whole in a manner which is useful and informative generally as an approach to evidence in such cases. Notably, he did not shy away from a judgment which was highly critical of E whilst acknowledging in the last paragraph of his judgment (paragraph 254) that E and A (M's mother and father) would have an enormous amount to offer their son if they "*could work in collaboration with the local authority and other professionals in M's best interests*."

The limits of paternalism

Re DM [2014] EWHC 3119 (Fam) (Hayden J)

Practice and procedure – other

Summary

Sunderland City Council sought declaratory relief sanctioning a birth plan in respect of a vulnerable adult which contemplated: (i) interference with the mother/baby relationship following the birth which involved some unspecified level of forced separation and, potentially, removal of the child; and (ii) that the mother should not be informed of key aspects of the plan.

The above orders were sought under the Human Rights Act 1998 and the inherent jurisdiction of the High Court.

The application was made on a Friday. Hayden J adjourned it over the weekend because he did not consider that the evidence had been fully marshalled. On Monday, the local authority sought permission to withdraw its application. Hayden J granted permission to withdraw 'without hesitation' because he was far from persuaded of the necessity for or proportionality of the relief sought.

The expert evidence was that the mother had capacity to make decisions about (i) the contact she had with professionals (ii) the safe management of the birth of her baby and particularly in deciding whether and when to undergo an induction and (iii) to make decisions about the treatment she should receive following the birth of the baby.

The young woman had given birth on 8 previous occasions and each of those children had been removed from her care and placed for adoption. The mother had also gone into hiding late in her last pregnancy. Relevant clinicians had come to the conclusion in this pregnancy that labour should be induced for the mother's own health. The local authority was understandably concerned that the mother might go into hiding again jeopardising her own health, that of the unborn child and that of the child following birth. The local authority sought to protect the mother and to put in place such protective measures as they could on the birth of the child. Hayden J described the instincts of the local authority as 'laudable' but with a 'paternalistic complexion'. He emphasised that the law was vigorous in protecting the fundamental principle of personal autonomy. He noted that individuals are entitled to take their own decisions, both good and bad and are at liberty to make their own mistakes.

The starting point was that the local authority had an obligation to consult parents in the care planning for their children and/or unborn child.

Hayden J reiterated that in UK law a foetus has no rights of its own until it is born and has a separate existence from its mother. It was a principle that infused the whole of the criminal and civil law in the UK. Balcombe LJ in *Re F (in Utero) (Wardship)* [1988] 2FLR 307 had confirmed that the inherent jurisdiction did not extend to the unborn child.

The issue in this case was therefore the future rights of a child, crystallising on birth and the present and existing rights of a pregnant, capacitous woman. In *St George's Healthcare NHS Trust v S and R v Collins & Ors, ex parte S* [1998] 2 FLR 728 Judge LJ in the Court of Appeal concluded that a capacitous adult should be entitled to decline medical treatment even if her life or that of the unborn child depended on it. The 'powerful elucidation of the law' by Buter-Sloss LJ in *Re MB (An adult: Medical treatment)*

[1997] 2 FLR 426 remained the starting point in all applications:

> "*… a competent woman who has the capacity to decide may, for religious reasons, other reasons, or for no reasons at all, choose not to have medical intervention, even though … the consequence may be the death or serious handicap of the child she bears or her own death. She may refuse to consent to the anaesthesia injection in the full knowledge that her decision may significantly reduce the chance of her unborn child being born alive. The foetus up to the moment of birth does not have any separate interests capable of being taken into account when a court has to consider an application for a declaration in respect of a caesarean section operation. The [law] does not have the jurisdiction to declare that such medical intervention is lawful to protect the interests of the unborn child even at the point of birth.*"

The application in this case was based on the landmark decision of Munby J (as he then was) in *Re D (Unborn baby)* [2009] 2 FLR 313. In *Re D*, Munby J was not exercising the inherent jurisdiction in relation to an incapacitated adult; he was concerned with the best interests of the baby when born. Munby J emphasised the "*wholly exceptional*" circumstances in which anticipatory relief would be granted. It was necessary to ensure that it was not only "*appropriate and justified', but 'imperatively demanded*" in the interest of safety in the period immediately following the birth of a child. It was always to be regarded as "*highly unusual*" and a "*very exceptional step*."

Hayden J went on the revisit in summary the exceptional circumstances of the *Re D* case which included: the fact that the mother was serving a custodial sentence due to a serious assault on her daughter during a supervised contact session; the mother's continuing extreme distress and challenging behaviour including an attempt to take her own life in highly alarming circumstances in her cell; the fact that the mother had expressed the view that her children would be better off dead than in the care of the local authority. He emphasised tha*t Re D was "a wholly exceptional case*" and reiterated that the courts and local authorities must be vigilant to ensure that the wholly exceptional nature of the relief was never lost sight of.

Hayden J did not consider that any more recent cases had weakened the test set out by Munby J in *Re D*. He did not consider that it would be helpful to set out prescriptive conditions but stated that to invoke the declaratory relief initially sought in this case the facts would require a level of 'exceptionality' and would be characterised by the 'imperative demands' and the 'interests of safety' of the new-born baby in the period immediately following its birth.

Hayden J held that the professional instincts in this case were sincere but they were ultimately misconceived. It was possible to keep the mother and baby together in a manner that respected the mutual need each for the other in the period immediately following birth which would have the effect of maintaining the respective rights of both mother and baby until the Family Proceedings Court could hear the inevitable applications.

Although the judgment had described the application as misconceived the judged observed that professionals involved in these difficult decisions provided a huge service to the woman and babies they dealt with and society more widely. This case, Hayden J, had illustrated the challenges they faced and the debt we all owed to them.

Comment

This case is a useful reminder of the limits of the inherent jurisdiction (albeit as it applies in a rather different context to that jurisdiction as it applies in relation to vulnerable adults) and the wholly exceptional nature of the *Re D* case with its use of an anticipatory declaration in the interests of a child who has just been born.

It is also a useful reminder for local authorities and those who act for local authorities that good intentions and legitimate professional concerns can stray into the realm of paternalism.

Short note: the legal aid debate escalates

In some of his most trenchant comments to date, Sir James Munby P has raised the stakes yet further in the battle (we entirely support) to secure proper funding for representation in proceedings concerning the most vulnerable. In *Re D (A Child)* [2014] EWFC 9, the President was concerned with care proceedings in which:

(1) The father lacked capacity to litigate and therefore required a litigation friend. That litigation friend was the Official Solicitor, who was only prepared to act because the father's solicitor and counsel had agreed to act, thus far, *pro bono* and, indeed, further, the solicitor had agreed to indemnify him against any adverse costs orders;[1]

(2) The mother, although she had learning disabilities, was not a protected party. Because of her *"personal characteristics, intellectual functioning and limitations which affect* [her]," she was in the view of her Counsel (endorsed by the President) "*wholly unable to represent herself in relation to any aspect of* [the] *proceedings*;"

(3) Neither qualified for legal aid but both lacked the financial resources to pay for legal representation where, as the President put it "*unthinkable that they should have to face the local authority's application without proper representation*."

Sir James Munby set out a number of propositions of equal application – we suggest – to "adult care" proceedings before the Court of Protection where a local authority wishes to remove an adult P from the care of their parents.

He noted, in particular, the decision of the European Court of Human Rights in *RP v United Kingdom* [2008] EWCA Civ 462, drawing attention, especially, to the underlined words in paragraph 67:

> *"67 In light of the above, and bearing in mind the requirement in the UN Convention that State parties provide appropriate accommodation to facilitate disabled persons' effective role in legal proceedings, the court considers that it was not only appropriate but also necessary for the United Kingdom to take measures to ensure that RP's best interests were represented in the childcare proceedings. Indeed, in view of its existing case-law the court considers that a failure to take measures to protect RP's interests might in itself have amounted to a violation of Art 6(1) of the European Convention (emphasis added)."*

[1] It should also be noted that the solicitor, Rebecca Stevens of Withy King had spent in excess of 100 hours, all unremunerated, working to resolve the issue of the father's entitlement to legal aid. As the President noted, "[t]*his is devotion to the client far above and far beyond the call of duty*."

The President described the parents' predicament as "*shocking*":

> *"31. Stripping all this down to essentials, what do the circumstances reveal?*
>
> *i) The parents are facing, and facing because of a decision taken by an agent of the State, the local authority, the permanent loss of their child. What can be worse for a parent?*
>
> *ii) The parents, because of their own problems, are quite unable to represent themselves: the mother as a matter of fact, the father both as a matter of fact and as a matter of law.*
>
> *iii) The parents lack the financial resources to pay for legal representation.*
>
> *iv) In these circumstances it is unthinkable that the parents should have to face the local authority's application without proper representation. To require them to do so would be unconscionable; it would be unjust; it would involve a breach of their rights under Articles 6 and 8 of the Convention; it would be a denial of justice.*
>
> *v) If his parents are not properly represented, D will also be prejudiced. He is entitled to a fair trial; he will not have a fair trial if his parents do not, for any distortion of the process may distort the outcome. Moreover, he is entitled to an appropriately speedy trial, for section 1(2) of the 1989 Act and section 1(3) of the 2002 Act both enjoin the court to bear in mind that in general any delay in coming to a decision is likely to prejudice the child's welfare. So delay in arranging for the parents' representation is likely to prejudice the child. Putting the point more generally, the court in a case such as this is faced with an inescapable, and in truth insoluble, tension between having to do justice to both the parents and the child, when at best it can do justice only to one and not the other and, at worst, and more probably, end up doing justice to neither.*
>
> *vi) Thus far the State has simply washed its hands of the problem, leaving the solution to the problem which the State itself has created – for the State has brought the proceedings but declined all responsibility for ensuring that the parents are able to participate effectively in the proceedings it has brought – to the goodwill, the charity, of the legal profession. This is, it might be thought, both unprincipled and unconscionable. Why should the State leave it to private individuals to ensure that the State is not in breach of the State's – the United Kingdom's – obligations under the Convention? As Baker J said in the passage I have already quoted, "It is unfair that legal representation in these vital cases is only available if the lawyers agree to work for nothing."*

The President then threw down the gauntlet in no uncertain fashion, in a fashion presaged in his earlier decision in *Q v Q* [2014] EWFC 7, and directed a further hearing:

> *"at which, assuming that the parents still do not have legal aid, I shall decide whether or not their costs are to be funded by one, or some, or all of (listing them in no particular order) the local authority, as the public authority bringing the proceedings, the legal aid fund, on the basis that D's own interests require an end to the delay and a process which is just and Convention compliant, or Her Majesty's Courts and Tribunals Service, on the basis that the court is a public authority required to act in a Convention compliant manner.*

> *37. Copies of this judgment, and of the order I made following the hearing on 8 October 2014, will accordingly be sent to the Lord Chancellor, the Legal Aid Agency, Her Majesty's Courts and Tribunals Service and the Association of Directors of Children's Services, inviting each of them to intervene in the proceedings to make such submissions as they may think appropriate. If they choose not to intervene, I shall proceed on the basis of the conclusions expressed in this judgment, in particular as I have set them out in paragraph 31.*"

(In)equality of arms and legal aid (2)

In *Re H*, an unreported case available (at present) only on Lawtel, HHJ Hallam made some very trenchant comments as to the dangers arising from the inequality of arms in child protection proceedings of equal application (we suggest) in equivalent 'adult protection' proceedings in the COP. In particular, whilst not having legal aid would not prevent an unrepresented mother with evident speech, hearing and learning difficulties from having physical access to a court she had "*undoubtedly been prevented from having intellectual access to* [the] *court*," such that it could not properly be said that her access was "effective."

HHJ Hallam held that the mother was not "*sufficiently disadvantaged to say that she does not have capacity to litigate. She has capacity to litigate but in my judgment that is only with the assistance of a solicitor. She has difficulties in hearing, in speech and intellectual difficulties. She is unable to read or write. They are not fanciful difficulties. In previous public law proceedings there has been a report from Dr Cooper, who is a psychologist, informing the court of the mother's cognitive difficulties and learning difficulties. Having seen the mother in court, I am satisfied that she would not have been able to represent herself in a case as complex as this and therefore, in my judgment, she was, to all intents and purposes, prevented from having access to this court save for, as I say, the extremely fortunate event that someone was prepared to step in and represent her pro bono*."

HHJ Hallam found it "astounding" to say (as did the LAA) that there would be no breach of the mother's Convention rights where she was unrepresented, and both the local authority and the father were (a) represented; and (b) running cases against her, when she was the party with the least ability and greatest vulnerability. HHJ Hallam "*could not think*" of a clearer breach of Article 6 ECHR, and equally found that Article 8 ECHR was engaged and would have been breached but for the fact that some *pro bono* representation had been arranged.

Guidance for Litigation Friends in the Court of Protection

As many of you will know, Alex has spent a significant part of this year working on guidance commissioned by the Department of Health for IMCAs, RPRs and other advocates (as well as family members and friends of putative 'P's) considering acting as litigation friends in the Court of Protection.

The guidance has now been published, and is hosted by the University of Manchester, available here. As it says in its introduction:

> *Th*[e] *Guidance aims to demystify the Court of Protection generally and the role of litigation friend specifically so as to enable more people to consider taking up the role – thereby ensuring the better promotion and protection of the rights of those said to be lacking capacity to take their own decisions.*

Because of its scope, it guidance may also serve as a useful (free) overview for others wishing to learn more about the Court of Protection.

The guidance is primarily aimed at proceedings relating to health and welfare, and its chapter headings are as follows:

A: Overview
B: An overview of the Court of Protection
C: Who can be a litigation friend for P in proceedings before the Court of Protection?
D: Becoming a litigation friend and instructing lawyers
E: What does a litigation friend do?
F: When is it appropriate to bring a case to the Court of Protection as litigation friend for P?
G: How do cases before the Court of Protection proceed?
H: When would an appointment of a litigation friend come to an end?
I: Practicalities
J: Frequently asked questions
K: Useful sources of information

There are also appendices containing checklists, a template position statement and details of the 'balance sheet' approach.

Alex is very grateful indeed to the very many people who took the time to attend workshops and comment upon drafts, and generally – he hopes – to assist in producing a document that will be of actual use!

Transparency in the Family Court

Sir James Munby, President both of the Court of Protection and of the Family Division, has placed a very high priority on increasing transparency in both courts. In consequence, we have the Practice Guidance issued in January 2014 relating to the publication of judgments in the Court of Protection. As yet, further steps (for example, enabling increased media access to hearings) have yet to be taken in the Court of Protection.

In August 2014, the President issued a consultation on next steps in the Family Court. This has already produced a number of responses, usefully collated by Jordans Family Law website here, and we suggest that the results may well cause us to take stock before any moves are taken to move down the route to further transparency in the Court of Protection.

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Conferences at which editors/contributors are speaking

Edge AMHP Conference

Neil will be speaking at Edge Training's Annual AMHP conference on 28 November. Full details are available here.

Talks to local faculties of solicitors

Adrian will be addressing local faculties of solicitors on matters relating (inter alia) to adult incapacity law in Aberdeen on 20 November and Wigtown on 10 December.

Borderline Personality Disorder and Self Harm

Jill is chairing a jointly hosted seminar (the Centre for Mental Health and Incapacity Law, Rights and Policy NHS Tayside and Perth and Kinross Council) on "Borderline Personality Disorder and Self Harm" in Perth on 25 November

LSA Annual Conference

Jill is speaking about the Mental Health (Scotland) Bill 2014 at the Legal Service Agency's Annual Conference in Glasgow on 27 November. For details, see here.

Intensive Care Society State of the Art Meeting

Alex will be speaking on deprivation of liberty safeguarding at the Intensive Care Society's State of the Art Meeting on 10 December 2014. Details are available here.

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Advertising conferences and training events

If you would like your conference or training event to be included in this section in a subsequent issue, please contact one of the editors. Save for those conferences or training events that are run by non-profit bodies, we would invite a donation of £200 to be made to Mind in return for postings for English and Welsh events. For Scottish events, we are inviting donations to Alzheimer Scotland Action on Dementia.

Chambers Details

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

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THE QUEEN'S AWARDS FOR ENTERPRISE INTERNATIONAL TRADE 2013

Contributors: England and Wales

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Alex been recommended as a leading expert in the field of mental capacity law for several years, appearing in cases involving the MCA 2005 at all levels up to and including the Supreme Court. He also writes extensively about mental capacity law and policy, works to which he has contributed including 'The Court of Protection Handbook' (2014, LAG); 'The International Protection of Adults' (forthcoming, 2014, Oxford University Press), Jordan's 'Court of Protection Practice' and the third edition of 'Assessment of Mental Capacity' (Law Society/BMA 2009). He is an Honorary Research Lecturer at the University of Manchester, and the creator of the website www.mentalcapacitylawandpolicy.org.uk. To view full CV click here.

Victoria Butler-Cole
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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. She previously lectured in Medical Ethics at King's College London and was Assistant Director of the Nuffield Council on Bioethics. Together with Alex, she co-edits the Court of Protection Law Reports for Jordans. She is a contributing editor to Clayton and Tomlinson 'The Law of Human Rights', a contributor to 'Assessment of Mental Capacity' (Law Society/BMA 2009), and a contributor to Heywood and Massey Court of Protection Practice (Sweet and Maxwell). To view full CV click here.

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

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

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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 practising Scottish solicitor, a partner of T C Young LLP, who has specialised in and developed adult incapacity law in Scotland over more than three decades. Described in a court judgment as: "*the acknowledged master of this subject, and the person who has done more than any other practitioner in Scotland to advance this area of law*," he is author of *Adult Incapacity*, *Adults with Incapacity Legislation* and several other books on the subject. To view full CV click here.

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Dr Jill Stavert is Reader in Law within the School of Accounting, Financial Services and Law at Edinburgh Napier University and Director of its Centre for Mental Health and Incapacity Law Rights and Policy. Jill is also a member of the Law Society for Scotland's Mental Health and Disability Sub-Committee, Alzheimer Scotland's Human Rights and Public Policy Committee, the South East Scotland Research Ethics Committee 1, and the Scottish Human Rights Commission Research Advisory Group. She has undertaken work for the Mental Welfare Commission for Scotland (including its 2013 updated guidance on Deprivation of Liberty) and is a voluntary legal officer for the Scottish Association for Mental Health. To view full CV click here.