Mental Capacity Law Newsletter February 2015: Issue 53

Court of Protection: Health, Welfare and Deprivation of Liberty

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Introduction

Welcome to the February 2015 Newsletters, revamped to reflect our new name of 39 Essex Chambers. We have taken the opportunity of the launch of our new Chambers website to bring together all our mental capacity resources in one place.

Highlights this month include:

(1) In the Health, Welfare and Deprivation of Liberty Newsletter: a further chapter in the saga of consent to sex; unlawful removals from the family home; and the new DOLS forms;

(2) In the Property and Affairs Newsletter: failed attempts to prevent the OPG/COP having oversight over an attorney and to get costs against the OPG and the OPG's review of deputy monitoring;

(3) In the Practice and Procedure Newsletter: an important case on declarations and contempt; a rare decision on permission;

(4) In the Capacity outside the COP Newsletter: the new Practice Note for representation before the MH Tribunal; the new MHA Code of Practice; and the new offences of ill-treatment and wilful neglect;

(5) In the Scotland Newsletter: detailed coverage of the Special Case that has resolved the question mark over the validity of powers of attorney raised by Sheriff John Baird, as well as important guidance on vulnerable clients and Practice Rules relating to powers of attorney and an update on the Mental Health (Scotland) Bill.

We also bid temporary farewell and all best wishes to Anna Biccaregui as she goes on maternity leave, and a very warm welcome to Annabel Lee who joins the editorial team in her place.

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

Stop press: *Rochdale* appeal allowed by consent

In what may count as a rare bit of good news in the battle for clarity as to exactly what constitutes a deprivation of liberty[1] we can confirm that the appeal in *Rochdale MBC v KW* [2014] EWCOP 45 – listed to be heard on 4 or 5 February – has been allowed by consent. It is unfortunate, perhaps, that this means that there will be no judgment.

However, the Court of Appeal could, in principle, have followed Mostyn J in refusing to follow the agreed position of the parties that KW's position amounted to a deprivation of liberty. The Court of Appeal's endorsement of the consent order therefore means – we suggest – that practitioners can now proceed on the basis that Mostyn J's conclusions as to what freedom to leave mean can be treated with extreme caution at best, if not consigned to history entirely. That does not mean that the philosophical questions that he raised as to the meaning of liberty will necessarily go away, but they will fall perhaps better to be considered in the wider-ranging Law Commission review of the area.

For those after further assistance, we also note that the Guidance commissioned by the Department of Health from the Law Society (to which both Alex and Neil are contributing) is on track to be published before the end of February. Alex will make sure that it is publicised as soon as it is published on his website, and we will no doubt be highlighting key features next month.

[1] And with gratitude to Jola Edwards of Peter Edwards Law and Simon Burrows, solicitor for the appellant and Counsel for the respondent respectively for letting us know and confirming that we may circulate this information.

You can refuse – capacity to consent to sexual relations revisited

LB Tower Hamlets v TB and ors [2014] EWCOP 53 (Mostyn J)

Mental capacity – sexual relations

Summary

This is the latest judgment in long-running proceedings concerning the best interests of a Bangladeshi woman with a moderate learning disability. In 2010 and 2011, orders were made in the family court providing for the permanent adoption of TB's four children. In those proceedings, TB's husband had been found to have physically assaulted TB.

In 2012, the Court of Protection made interim declarations that it was in TB's best interests to live in supported accommodation rather than with her husband and his (polygamous) second wife, and their child. TB's placement did not prove successful – much as in the property she lived in with her husband, she spent hours lying on the sofa watching TV. Supervised contact took place between TB and her husband, which the court found was generally worthwhile for TB, although her husband had attempted to induce her to say she wanted to return to live with him.

The court held that it was not in TB's best interests to return to live with her husband, and directed the local authority to use its best endeavours to find an alternative placement for her, in line with the recommendations of the court-appointed expert, or, if that was not possible, to replace TB's care team with people able to promote TB's social life and integration into the community.

The court also made a final declaration that notwithstanding TB's previous pregnancies, she lacked capacity to consent to sex. In doing so, Mostyn J reviewed the authorities addressing what the relevant information is that must be understood, retained and used to make a decision whether to consent to sexual relations. Mostyn J concluded that understanding the risk of pregnancy was not a separate issue, as previous authorities had stated, but that it formed part of understanding "*that there are health risks involved*." He did not appear to accept an argument that since TB had an IUD fitted (the same having previously been authorised by the court), there was no need for her to understand the risk of pregnancy. Mostyn J further rejected the analysis of the Official Solicitor that the ability to say yes or no to sex is not a concept that must be understood as part of the relevant information, preferring the approach of Hedley J in *Re H* [2012] EWHC 49 (COP), who had held that a relevant question was "*does the person whose capacity is in question understand that they do have a choice and that they can refuse?*"

Thus, Mostyn J held, the relevant information was:

1. the mechanics of the act; and

2. that there are health risks involved; and

3. that he or she has a choice and can refuse.

In adopting this approach, Mostyn J both made clear that he had been persuaded that the more nuanced approach adopted by Hedley in *Re H* was to be preferred to the approach that he himself had adopted in *Re AB*, and that this more nuanced approach aligned the civil and criminal law (see in this regard *R v Azanzi*).

Mostyn J also took the opportunity to comment on his decision in *Rochdale Metropolitan Borough Council v KW* [2014] EWCOP 45, saying that "[t]he state is obliged to secure the human dignity of the disabled by recognising that 'their situation is significantly different from that of the able-bodied.' Thus measures should be taken "to ameliorate and compensate for [those] disabilities," and that characterising those measures as state detention was "unreal."

Comment

There are three interesting features of this case.

1. First, the court made a negative best interests declaration – that it was not in TB's best interests to live with her husband – rather than a positive choice between two identified alternatives. The court felt able to rule out the option of a return home, even though the current living arrangements for TB were not ideal, and to direct the local authority to improve them. It will be interesting to see how that approach fits into what the Court of Appeal says in the *ACCG* appeal in due course.

2. Secondly, there is now yet another statement about what the information relevant to a decision about sexual relations is. Although a consensus seems to be emerging, difficult questions such as what the extent of knowledge about health risks must be, and whether a risk that does not exist in the particular factual scenario is relevant, remain.

3. Thirdly, the judge's further comments on the vexed issue of deprivation of liberty explain in more detail the difficulty many people have in seeing how the intensive support and care that a person requires to

meet their needs could engage Article 5 ECHR. With the abrupt end to the *Rochdale* case, these questions will remain unanswered by the higher courts at this stage.

Not so fluffy: counting the cost of non-compliance

Essex County Council v RF & Ors [2015] EWCOP 51 (Mostyn J)

CoP jurisdiction and powers – Damages

Summary

This judgment from District Judge Mort provides some useful guidance on the level of damages to be awarded in Court of Protection proceedings for unlawful detention.

P was 91 year old gentleman, a retired civil servant, who had served as a gunner with the RAF during the war. He had lived alone in his own house with his cat Fluffy since the death of his sister in 1998. He was described as being a very generous man ready to help others financially if he believed they needed it, as well as making donations to various charities.

He had dementia, and other health problems including difficulty in mobilising, delirium and kidney injury caused by dehydration.

In May 2013 P was removed from his home by the local authority and placed in a locked dementia unit. It was not clear that P lacked capacity at the time and he was removed without any authorisation. The local authority eventually accepted that that P had been unlawfully deprived of his liberty for a period amounting to approximately 13 months. A compromise agreement which included £60,000 damages for P's unlawful detention was agreed between the parties.

In considering the level of compensation to which P was entitled, District Judge Mort made a distinction between cases involving procedural breaches and those involving substantive breaches:

> *"72. Procedural breaches occur where the authority's failure to secure authorisation for the deprivation of liberty or provide a review of the detention would have made no difference to P's living or care arrangements.*
>
> *73. Substantive breaches occur where P would not have been detained if the authority had acted lawfully. Such breaches have more serious consequences for P."*

This case involved a substantive breach of P's rights. If it hadn't been the unlawful actions of the local authority, P would have continued to live at home with support arrangements in place. The deprivation of P's liberty during given the late stage of his life compounded its poignancy.

District Judge Mort considered two previous cases involving damages for unlawful detention. In *London Borough of Hillingdon v Neary* [2011] EWHC 3522 (COP), a period of 12 months' detention resulted in an award of £35,000 (no judgment being made public to accompany the consent order approved by the High Court). In *A Local Authority v Mr and Mrs D* [2013] EWCOP B34, District Judge Mainwaring-Taylor approved an award of £15,000 (plus costs) to Mrs D for a period of 4 months unlawful detention (together with £12,500 to her husband, together with costs). In *Mr and Mrs D*, District Judge Mainwaring-Taylor had noted that this was towards the lower end of the range if the award in the *Neary* case was taken as the bench mark.

Taking these cases into account, District Judge Mort gave an indication that the level of damages for the unlawful deprivation of an incapacitated person's liberty was between £3,000 and £4,000 per month.

District Judge Mort was also invited to consider the other terms of the compromise agreement, which included:

- A declaration that the Council unlawfully deprived P of his liberty for period of approximately 13 months;
- The Council would waive any fees payable by P to the care home in which he was detained for the period of his detention (a sum of between £23,000 and £25,000);
- The Council to exclude P's damages award from means testing in relation to P being required to pay a contribution to his community care costs;
- The payment of all P's costs, to be assessed on the standard basis.

The judge approved the compromise agreement as representing a fair and reasonable award so far as a monetary award can compensate him for the loss of his liberty in the circumstances.

Comment

There are currently very few public judgments giving guidance as to the level of damages to be awarded for unlawful deprivations of liberty. This judgment is a welcome addition to the sparse examples available. The guideline of £3,000 to £4,000 per month is a useful indicator for COP practitioners seeking to advise on quantum of damages likely to be recovered for an unlawful deprivation of liberty and for parties seeking to agree a compromise agreement where liability is admitted.

In this case, the approved award appears to lie at the higher end of the spectrum. P was unlawfully deprived of his liberty for a minimum of 13 months (which was conceded by the local authority) and arguably for 17 months. The £60,000 award would place the level of damages at between £3,500 and £4,600 per month. There were a number of factors which made this case particularly serious. P was removed from his home of 50 years and locked in a dementia unit against his wishes. Subsequent assessments concluded that P had capacity to return home and should be assisted to return home but were ignored by the local authority. Moreover, the local authority maintained their resolute opposition to P returning home until the last possible moment. The local authority's actions were – entirely understandably on the basis of the judgment – described by the judge as "reprehensible," "substandard" and "inexcusable."

When informality is inappropriate

Summary

The Local Government Ombudsman report into the case of Mr N, a complaint against Cambridgeshire County Council makes, yet again, depressing reading. We take what follows from the summary on the LGO website, but the report should be read in full, and indeed used as a case study for training.

An elderly man, Mr N, who had been diagnosed with dementia in 2011, lived with his wife at home until April 2013, attending a day centre one day a week. His needs began to increase substantially at the start of 2013, and by June 2013 his case was a high priority. The LGO's

report sets out in admirable detail the entirely inadequate process of assessment as regards whether he should be placed in a nursing home (and if, so which) that ensued thereafter.

In consequence of this, Mr N was moved to a nursing home some 14 miles away from his marital home after his needs increased considerably in June 2013, against both the man and his family's wishes, who wanted him closer to home. This meant that his wife had to take two buses there and back to visit him.

The man's wife, daughter and brother were told the police would be called if they tried to move him from the home. Because the man and his family made repeated requests for him to return home, the Council's Deprivation of Liberty Safeguarding (DoLs) team should have been contacted, but never were.

Social workers completed a Mental Capacity and Best Interest Decision Record in July 2013, but the LGO found that the record was incomplete, failed to include some formal requirements and did not go into adequate detail to explain the reasoning behind the decision.

Following the investigation, the LGO found that the Council failed to consider properly whether the man's placement in the nursing home amounted to a deprivation of liberty. The LGO also noted that Mr N's family were never given information about how they could appeal [sic] the decision to the Court of Protection.

The LGO asked Cambridgeshire County Council to apologise to the family to acknowledge the impact the faults have had on them and assure them that the situation will not happen again. The LGO also recommended that the Council should also provide refresher training for social care staff on mental capacity assessments, best interest decisions, deprivation of liberty, and the role of the Court of Protection and how to advise people of their rights. This may involve the council reviewing the current status of residents who may be deprived of their liberty without proper authorisation. It finally recommended that the Council should pay the family £750 in recognition of the distress and time and trouble they had been put to in making the complaint.

Comment

Reading this report alongside the judgment in *Essex County Council v RF*, it is difficult not to have the impression that Cambridgeshire County Council escaped very lightly, at least in financial terms. This was undoubtedly a *Neary* case, and the lawfulness of the deprivation of Mr N liberty is – at best – highly questionable (as was the lawfulness of the undoubted interference with his Article 8 rights, and those of his wife).

For present purposes, we want to pick out the following points of particular wider importance:

1. The LGO was highly critical of the informality of the decision-making process (both as to capacity and best interests) an informality that the Council continued to defend even during the course of the LGO investigation. The LGO emphasised the importance of complying not merely with the principles of the MCA 2005 but also the provisions of the Code of Practice in undertaking a structured approach to these vital questions;

2. The LGO rejected the Council's contention that it was the care home's responsibility to notify their DOL team of the potential deprivation of liberty (which the Council considered only arose where the person continued to express a desire to return home). The LGO noted that "*under s25(7) of*

the Local Government Act 1974 [relating to authorities under investigation by the LGO], *any action taken by the home is considered to be taken on behalf of the Council and in the exercise of its functions. Furthermore, the DoL Code is clear that 'if a healthcare or social care professional thinks that an authorisation is needed, they should inform the managing authority.' In this case, the Council was acutely aware of the circumstances of and objections to the placement.*"

3. The LGO was highly critical of the Council's – acknowledged – failure to give information to Mrs N about her options in terms of taking matters to the Court of Protection;

4. The LGO was also at pains to point out the importance of the Choice of Accommodation Directions even in a case said to be of urgency, and criticised the Council by reference to these Directions for its failure both to given sufficient consideration to closer options and to give written reasons for rejecting them.

In part because we are getting somewhat depressed ourselves by reporting upon cases such as these (especially ones where the excuse of the novelty of the MCA 2005 cannot properly be given), we would like to invite our readers to submit examples of good practice in circumstances such as these that we can highlight in a subsequent newsletter. They can, of course, be anonymous.

New DOLS forms

An Adass DoLS project group, led by Lorraine Currie, has carried out the unenviable task of simplifying the DoLS forms. From 32 to now 13, the new versions, available here, will hopefully reduce the bureaucracy surrounding the protective regime whilst improving the quality of the assessments. Explanatory Guidance to accompany the forms is due out shortly.

The impact of *Cheshire West*

The latest statistics reveal that DoLS applications reached their highest level in October to December 2014. And this is only on the basis of an 83% response rate from supervisory bodies in England: the final number will be higher.

With the shortfall in best interests assessors, the government has approved a scheme which enables the College of Social Work to vet and approve BIA training courses on a temporary basis, pending the outcome of the Law Commission's project to review the law in this area.

CQC Report on DOLS in 2013-4 (and over the past 5 years)

The CQC published on 26 January its fifth annual report on the use of the DOLS regime, covering the period 2013-4. It also takes the opportunity to reflect upon the past years since the regime came into force, as well as reporting specifically upon practice in 2013-4.

The report paints a distinctly depressing picture in many ways, although there are rays of sunshine, in particular in the examples that are given from practice where DOLS has been used to bring about positive change in a care regime.

The headline statistics as regards the impact of the *Cheshire West* decision (taken from an analysis of the HSCIC figures) are that the number of applications reported by most (but not all) local authorities in the first two quarters of 2014/15 (55,129) already greatly

exceeds the number made by all local authorities in 2013/14 (13,220). At the end of September 2014, there were 19,429 applications where a decision was still to be made, while at the end of 2013/14 there were just 359 where a decision was still to be made.

We identify a few key points from the report below.

As the CQC notes:

> *"It is both striking and concerning that we have seen the same themes recurring in our reports over the last five years.*
>
> - *From 2009 until the Supreme Court judgement on deprivation of liberty in March 2014, there have been consistently low numbers of Deprivation of Liberty Safeguards applications compared to the 21,000 initially predicted by the Government. This could suggest, as we highlighted in last year's report, that providers were not recognising when someone was being deprived of their liberty, so not seeking authorization*
>
> - *We continued to see regional variations in application rates. This could indicate a lack of understanding about the Mental Capacity Act (MCA). Over the last five years we have also found a wide variation in practice and training in health and social care organisations.*
>
> - *Lack of understanding about, and awareness of, the wider MCA continues to be a barrier to good practice.*
>
> - *Providers are failing to notify CQC when they apply for authorisation to deprive someone of their liberty [as required by Regulation 18 (4A) (4B) and (5) of the Care Quality Commission (Registration) Regulations 2009; these Regulations are not affected by the introduction of the new fundamental standards]. Since 2011, we have received notifications for just 37% of applications to supervisory bodies. This is unacceptable and we will be taking action where this problem persists."*

In respect of 6 areas, the rate of under-reporting would appear to exceed 80% for 2013-4, which is frankly astonishing. Given regional variations in applications for DOLS, it may well be that an partial explanation in respect of areas which appear to do better as regards under-reporting may not be entirely positive – it may be that providers are simply not applying in the first place.

The CQC draws attention to a number of developments, including the Chief Coroner's Guidance issued in December 2014. The CQC does not directly comment upon the accuracy of the Guidance, which suggests that inquests are only required where there is an authorisation in place, but notes that:

> *"Part of the challenge in responding to the Supreme Court judgement is in raising awareness with our partners of the true nature of the Deprivation of Liberty Safeguards. For example, it is not the authorisation that causes a deprivation of liberty, rather the authorisation makes sure that any deprivation of liberty is in the best interests of the individual concerned, can be challenged, and will be regularly reviewed.*
>
> ***We recommend that local authority leads for the MCA and Deprivation of Liberty Safeguards create good working relationships with their***

> ***local coroners. This is likely to be of great benefit to ensure that a consistent message is given to providers and so that they can work together in dealing with the considerable extra activity as a result of the Supreme Court judgement.***" (emphasis in original)

Another particularly important – and depressing – area where improvement is required is in relation to the role of IMCAs challenging authorisations. As the CQC notes:

> *"Under section 39D of the MCA, an IMCA must be offered to the person or their unpaid RPR if they, or the local authority, feel they need support to exercise their rights and to challenge an authorisation that has already been granted. Some unpaid representatives also need support to fulfil their role and can ask the local authority to provide an IMCA to support them when required.*
>
> *Local authorities told us of a range of practice in IMCA referrals, with some saying they would only instruct an IMCA if recommended by a best interests assessor. Even where there was disagreement between the person and the representative, some said they did not instruct an IMCA. This practice is to be deplored as if the RPR does not help them to challenge an authorisation, it is hard to see how many people subject to an authorisation can exercise their right to challenge it.*
>
> *These differences in practice echo the findings of the most recent Department of Health report into IMCA use. These found that about a third of local authorities had not made a single section 39D referral all year, including some with over 100 Deprivation of Liberty Safeguards authorisations. The report also showed that there had been a 17% reduction in referrals for a section 39D IMCA (to help challenge an authorisation). Twenty-three percent of IMCAs in our survey said that they had been involved in appealing against an authorisation to the Court of Protection and 46% had been asked to act as a litigation friend.*
>
> *IMCAs found the process lengthy and dauntingly complex. They felt that there was generally a lack of guidance for IMCAs about taking cases to the Court of Protection and because of this there were unnecessary delays. They felt that they would benefit from clear guidance about the process and how it should be used. We note that even before the rise in requests for authorisation some local authorities were not always providing the support of an IMCA or promoting their vital role in supporting the person to exercise their rights.*
>
> *We recommend that local authorities and IMCA providers work together to enable IMCAs to carry out their role to support the person or unpaid RPR to challenge an authorisation to the Court of Protection when it is the person's wish, whatever the IMCA's views on the rightness of the authorisation."* (emphasis in original)

The CQC analysed what enforcement actions we had taken during 2013/14 with providers who were not complying with the regulations associated with the MCA and Deprivation of Liberty Safeguards. With the caveat that the statistics may not represent the entirety of the enforcement activity because of difficulties with variation in reporting by inspectors on the MCA and DOLS (a problem that itself requires work), the CQC noted that:

- Over half (19 out of 34) of all enforcement action taken under Regulation 18 (Outcome 2 – consent) contained some evidence that the provider had not complied with the MCA, including the Deprivation of Liberty Safeguards.

- Almost a quarter (23 out of 94) of all enforcement action taken under Regulation 11 (Outcome 7 – safeguarding) contained some evidence that the provider had not complied specifically with the Deprivation of Liberty Safeguards.

The CQC "*also found some common themes emerging:*

- *People's capacity to make a specific decision was not being assessed.*
- *Decisions were being made on behalf of people without following the best interests decision making process.*
- *Relatives were asked to give consent without legal authority.*
- *The person and other people concerned with the person's care were not always being consulted when making best interest decisions.*
- *There were examples of unlawful use of restraint and unauthorised deprivation of liberty.*
- *Lack of staff training in the MCA including the Deprivation of Liberty Safeguards."*

The CQC summarised its recommendations thus:

- Local authorities should continue to consider using advocacy services for all those subject to the Deprivation of Liberty Safeguards.
- Local authority leads for the MCA and Deprivation of Liberty Safeguards should create good working relationships with their local coroners. "*This is likely to be of great benefit to ensure that a consistent message is given to providers and that they can work together in dealing with the considerable extra activity as a result of the Supreme Court judgement*."
- Local authorities and Independent Mental Capacity Advocacy (IMCA) providers should work together to enable IMCAs to support the person or their unpaid relevant person's representative to challenge an authorisation to the Court of Protection when it is the person's wish, whatever the IMCA's views on the rightness of the authorisation.
- Hospitals and care homes should continue to request authorisations when they think that people are being deprived of their liberty based on the new 'acid test'. *"However, they must also continue, within the provisions of the wider MCA, to seek less restrictive options to meet the needs of each person."*

Use of the Court of Protection's welfare jurisdiction by supervisory bodies in England and Wales

With grateful thanks to Lucy Series, we reproduced here with permission the summary of the report that Cardiff University Law School have just published into the use of the CoP's welfare jurisdiction by supervisory bodies in England and Wales. The report, funded by the Nuffield Foundation, is available in full here, and an article based upon it will appear in a forthcoming issue of the Elder Law Journal. We would thoroughly recommend reading it as an evidence base against which to test urban legends about the use of the CoP in welfare cases and as a basis upon

which to consider wider reforms to the procedures of the CoP in terms of the management of the cost and complexity of welfare proceedings.

"The Court of Protection (CoP) was established by the Mental Capacity Act 2005 (MCA) to adjudicate on issues relating to mental capacity and best interests. It can also determine questions relating to MCA deprivation of liberty safeguards (DoLS) authorisations issued by supervisory bodies, and authorize deprivation of liberty in hospitals and care settings. We requested information from local authorities about their involvement in CoP welfare cases during 2013-14 using the Freedom of Information Act 2000.

Key findings:

- *81% of authorities in England reported at least one welfare case, the average number for a local authority in England was three and 4% of authorities had been involved in more than ten.*
- *In Wales, 56% of local authorities reported at least one welfare case, the average number was one and none had been involved in more than three.*
- *Variations in the number of cases between local authorities could not be explained by population size alone, and neither could lower patterns of use of the court in Wales.*
- *Almost three quarters of applications to the court were made by local authorities; applications by the relevant person, their family or an advocate were rarer.*
- *Applications from the relevant person or an advocate were more common where the relevant person was subject to a deprivation of liberty authorization under Schedule A1 to the MCA 2005.*
- *In 62% of cases the relevant person was deprived of their liberty, either by an authorization under Schedule A1 (25%), by order of the CoP (43%) or both (15%).*
- *Half of all completed cases reported in our study lasted nine months or longer; half of all ongoing cases lasted twelve months or longer.*
- *Some cases had lasted as long as seven years; these are likely to be situations where a person is deprived of their liberty but its continuation must be regularly authorized by a court because it is in a setting where the DoLS administrative procedures do not apply.*
- *Half of all cases reported in our study were estimated to have cost local authorities £8,881 or more, but this figure is likely to be an under-estimate. One case was estimated to have cost a local authority £250,000.*
- *The greatest cost to a local authority was the time of in-house legal staff - costing £8,150 or more. The next greatest cost was fees for counsel, with half costing £3,198 or more, followed by the local authorities' contributions to independent expert reports, with half costing £1,357 or more.*

Recommendations and conclusions

Those responsible for monitoring health and social care in general, and the deprivation of liberty safeguards in particular, should ensure that authorities understand and comply with obligations to refer cases to the CoP in line with legal guidance.

The high cost of CoP proceedings is a matter of serious concern, especially in light of the ruling in Cheshire West which is predicted to lead to an exponential increase in applications in 2014-15.

The underlying reasons for the high cost and lengthy duration of CoP proceedings requires urgent investigation."

Inquest into the death of Nico Reed

With thanks to Yogi Amin of Irwin Mitchell for bringing this case to our attention, we note the important conclusion of the Coroner in the inquest into the death of Nico Reed, a young man who died in supported living accommodation privately funded under the auspices of Southern Health NHS Foundation Trust.

The Senior Coroner for Oxfordshire ruled that Article 2 of the European Convention on Human Rights was engaged on facts of Nico's case. As the press release prepared by Mencap at the time indicates:

"This inquest is believed to be one of the first in which a Coroner has relied upon the Cheshire West Supreme Court judgment from earlier this year to find that Article 2 of the European Convention on Human Rights (the right to life) applies. This reflects the fact that although Nico was in supported living he was in effect under the care of the state. It clarifies the obligations on those caring for vulnerable adults with learning disabilities to take steps to protect the right to life of those in their care."

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Conferences at which editors/contributors are speaking

Grasping the Thistle: A Discussion about Disabled People's Rights within the United Nations Disability Convention and Scottish Public Policy

Jill will be speaking at this roundtable arranged by Inclusion Scotland on 6th February.

Capacity and consent: complex issues

Jill is chairing, and Adrian will be speaking at, the next workshop of the Centre for Mental Health and Incapacity Law, Rights and Policy on 11th February, which will be addressing complex issues in capacity and consent. For further details, see here.

Royal Faculty of Procurators in Glasgow

Adrian is speaking at conferences convened by the RFPG on 11 February (Private Client) and 25th February ('Demand-led' – i.e. on topics selected in advance by attendees). Details available here.

The National Autistic Society's Professional Conference

Tor will be speaking at this conference, to be held on 3 and Wednesday 4 March in Harrogate. Full details are available here.

DoLS Assessors Conference

Alex will be speaking at Edge Training's annual DoLS Assessors Conference on 12 March. Full details are available here.

Elderly Care Conference 2015

Alex will be speaking at Browne Jacobson's Annual Elderly Care Conference in Manchester on 20 April. For full details, see here.

'In Whose Best Interests?' Determining best interests in health and social care

Alex will be giving the keynote speech at this inaugural conference on 2 July, arranged by the University of Worcester in association with the Worcester Medico-Legal Society. For full details, including as to how to submit papers, see here.

Advertising conferences and training events

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

Chambers Details

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

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THE QUEEN'S AWARDS FOR ENTERPRISE INTERNATIONAL TRADE 2013

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Alex 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, 2015, 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.

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

Annabel Lee
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Annabel appears frequently in the Court of Protection. Recently, she appeared in a High Court medical treatment case representing the family of a young man in a coma with a rare brain condition. She has also been instructed by local authorities, care homes and individuals in COP proceedings concerning a range of personal welfare and financial matters. Annabel also practices in the related field of human rights. To view full CV click here.

Simon Edwards
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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.

Adrian Ward
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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.