Mental Capacity Law Newsletter April 2015: Issue 55

Essex CHAMBERS

Court of Protection: Practice and Procedure

Introduction

Welcome to the April 2015 Newsletters. Highlights this month include:

(1) In the Health, Welfare and Deprivation of Liberty Newsletter: 'baby Bournewood?', an update on the long-awaited Guidance on Deprivation of Liberty, deprivation of liberty at home, the 7th IMCA report and an important ECtHR ruling on the acid test;

(2) In the Property and Affairs Newsletter: an important decision on the interaction between the CICA and the COP, anonymisation of judgments and changes to LPA forms;

(3) In the Practice and Procedure Newsletter: details of the first stage of reform of the COP rules, the new Practice Direction on contempt of court, vulnerable witnesses, and funding questions;

(4) In the Capacity outside the COP Newsletter: an editorial comment on the Care Act and capacity, the House of Lords debates the Select Committee report, recruitment for the chair of the National Mental Capacity Forum, an extremely important decision of the Supreme Court on informed consent, and the publication of the first work on the international protection of adults edited (inter alia) by Alex and Adrian;

(5) In the Scotland Newsletter: a bumper selection of important material, including news of a new project to consider compatibility of both Scots and NI legislation with the CRPD, the potential for the introduction of designated specialist sheriffs for adult incapacity work, and commentary on recent case-law of relevance to practitioners in the area.

We are also delighted to announce that, as of this month, Beverley Taylor, until recently the Deputy Official Solicitor, will be providing regular guest contributions.

Editors
Alex Ruck Keene
Victoria Butler-Cole
Neil Allen
Annabel Lee
Simon Edwards (P&A)

Guest contributor
Beverley Taylor

Scottish contributors
Adrian Ward
Jill Stavert

Table of Contents

For all our mental capacity resources, click here. Transcripts not available at time of writing are likely to be soon at www.mentalhealthlaw.co.uk.

All change at the Court of Protection (Part 1)

The Court of Protection (Amendment) Rules 2015 were laid before Parliament on 9th March. Unless (which is very unlikely). The first part of the Rules comes into force in part on 6th April and the second, larger, part on 1st July.

They represent the first tranche of rule changes that will bring about the most fundamental reform of the Court's processes since it came into being in 2007, reflecting the experiences of the first seven years of its life.

An unofficial consolidated version of the Rules as they will stand on 1 July 2015 can be found here and an unofficial consolidated version with commentary by Alex can be found here.

This note serves as an overview.

The most important rule change – and the rule that we think it is proper to say most exercised the brain cells of the members of the ad hoc Rule Committee (including Alex) – is the new Rule 3A, coming into force on 1st July 2015. This rule fundamentally refocuses the approach of the Court of Protection to the participation of P. It requires in each case the Court to consider, either on its own initiative or on the application of any person, consider whether it should make one or more of one of a 'menu' of directions relating to P's participation. That menu includes:

1. P being a party;

2. P's participation being secured by the appointment of a representative whose primary function is to give P a 'voice' by relaying information as to P's wishes and feelings;

3. Specific provision for P to address (directly or indirectly) the judge determining the application; or

4. No direction or an alternative direction (meeting the overriding objective) if P's interests and position can properly be secured.

Equally importantly, assuming that the necessary steps are taken to enable this to happen by way of the creation of a panel of such representatives, Rule 3A provides that a direction may be made appointing an accredited legal representative ('ALR') to represent P. This can be done whether or not P is a party; importantly, if P is a party, then an ALR may be appointed without a litigation friend being appointed to act for P. This innovation, drawn from Rule 11(7) of the Mental Health Tribunal Rules, is designed to supplement, not supplant, the role of litigation friends; the intention (as spelled out in the accompanying Practice Direction, 2A) is that ALRs can provide assistance where urgent orders are required and it is not possible to appoint a litigation friend. They may also play an important role in 'narrow' applications such as applications under s.21A MCA 2005, thereby allowing the resources of litigation friends – whether the OS or otherwise – to be reserved for more complex cases where, for instance, expert evidence will be required.

Other important rule changes include (this summary being drawn in part from the Explanatory Note):

- Amending rule 4 to reinforce the duty of the parties to co-operate so as to further the overriding objective of dealing with cases justly having regard to the principles in the MCA 2005, and making express that a failure

to cooperate (and to be full and frank in the disclosure of information and evidence to the court) can sound in costs. This is a precursor to what we anticipate will be more detailed consideration to be given in the second tranche of rules to the question of how case management in the COP can be reinforced as to ensure that limited public monies and judicial time are deployed in a way properly calibrated to the nature of the issues at stake (i.e. picking up concerns voiced by Peter Jackson J in *Re A and B (Costs and Delay)* [2015] EWCOP 48);

- Substituting a new Rule 9, which allows for the COP – in the case of a lacuna – to choose whether rules contained in the CPR or the FPR most appropriately fit the problem to be addressed. There is also provision to enable the version of the CPR or FPR to be applied to be specified – thereby getting round the problem which at exists at present in light of the mismatch between the CPR post-Jackson and the COPR as regards costs provisions;

- Making amendments to Parts 8, 9 and 12 to remove the need for a separate application where permission is required, removing the requirement for permission in certain cases (most obviously *Re X* type applications where authority is sought by way of an order under s.16(2)(a) MCA 2005 to deprive a person of their liberty), and making it easier for the requirement for permission to be removed in other cases;

- Introducing a requirement (in Rule 87A) that permission is required to withdraw proceedings (mirroring the provision in FPR r.29.4(2));

- In Part 12 (dealing with applications), making amendments in relation to allocation of types of cases to levels of judge, reflecting the introduction of Tier 1, Tier 2 and Tier 3 categories of judge following widening of the pool of judges who may be judges of the Court of Protection by virtue of changes made by the Crime and Courts Act 2013;

- In Part 13 (hearings), making amendments to allow communication of information about proceedings to third parties for specified purposes (for example, research), and for the court to be able to do this on its own initiative. There is also an important amendment to Rule 95 clarifying that the court can admit, accept and act upon such information, whether oral or written, from P, any protected party or any person who lacks competence to give evidence, as the court considers sufficient, although not given on oath and whether or not it would be admissible in a court of law apart from this rule. This amendment picks up – belatedly – the decision of McFarlane J (as he then was) in *Enfield LBC v SA* [2010] EWHC 196 (Admin) and the 'work around' he gave there as to the admissibility of evidence from P;

- Replacing Part 17, with details of how litigation friends and 'Rule 3A' representatives are to be appointed and how their appointment is to be brought to an end. It should be noted here that the new rule 144 ends the anomaly in the rules that existed previously that required P, in essence, to prove that they had litigation capacity: all P has to do now is to make an application;

- in Part 19 (costs), making amendments to ensure that where provisions of the Civil Procedure Rules are incorporated by

reference, they do not include the Jackson reforms insofar as they relate (e.g.) to costs budgeting;

- in Part 20 (appeals), which will come into force on 6th April, making provision for appeals within the Court of Protection between the different tiers of judge, and revised provision about appeals to the Court of Appeal; and

- in Part 21 (enforcement), making amendments to ensure that where provisions of the Civil Procedure Rules are incorporated by reference, they are the provisions following recent amendment.

New forms are in train to pick up these changes, and we will provide updates as and when we can.

The ad hoc Committee very deliberately did not seek in this tranche to tackle some of the other thorny questions that face the Court, for instance relating to transparency, expert evidence and the extent to which a regime akin to the Public Law Outline should be imported. This first tranche, however, will start the Court of Protection on a new trajectory that is orientated more clearly around P.

What to tell the press

A Healthcare Trust v P [2015] EWCOP 15 (Newton J)

Media – Court reporting

Summary

This judgment addresses the question of what information can be provided to the press in a public medical treatment case in which an application for a reporting restrictions order (RRO) is sought but has not yet been granted. The RRO application had been made by the applicant Trust but information identifying P had not been included because of objection by P's family. The Trust, the Official Solicitor and the Press Association agreed that identifying information should have been included and that the press would not therefore have been able lawfully to report P's name prior to the RRO application being determined. P's family argued that there was a lacuna in the relevant Rules and Practice Direction which meant that P could be identified by virtue of notification of the RRO being given to the press.

The court held that information identifying P should be provided to the press when applying for an RRO and that this did not lead to any real risk that P might wrongly be identified to the public before that application was determined. The Press Association informed the court that there was a contract in place with subscribers to the service alerting the national news media to applications (the Injunctions Alert Service) such that disclosure of otherwise confidential information was permitted only on the basis that it would not be published. The system was "*intended to provide a convenient and safe vehicle for potential applicants to notify the media of their applications, serve the relevant documentation and enable the subscribing members to make a properly informed decision about whether they wished to challenge any particular application*."

Under PD13A, there is no obligation to serve a draft order when notifying the press, and P's family relied on this as indicating that P's identity should not be disclosed to the press. The court held that it was nevertheless '*incumbent on the applicant to indicate clearly in the application and*

in the submissions the burden of the order being sought. Notice of course should indicate the categories of persons (if there are many, as for example with health professionals) whose identity would be kept confidential under the proposed order, if the applicant wishes to apply for an order restraining the media from communicating with those persons.' The court further held that P's identity should be given to the press. First, the wording of the Rules and Practice Direction suggested that withholding information would be exceptional and would not occur without a decision of the court. Secondly, the court (and the family) could trust the media and could be satisfied that the contractual arrangements in place were adequate to prevent erroneous publication. Thirdly, even if there were a rogue journalist or news organisation, making known P's identity would be likely to amount to either statutory or common law contempt of court. Fourthly, media organisations in receipt of an RRO application and details of P's identity would be under an equitable duty to keep treat the information as confidential.

Comment

This judgment clarifies a matter that can be of concern to families and healthcare providers in medical treatment cases, which are routinely held in public, and where applications for RROs are almost always made. The judgment casts some light on, but does not determine, what the position is as regards statutory and common law contempt of court in private Court of Protection cases where notification of the fact of proceedings and P's identity is given to a third party, for example a journalist or an MP, or is posted online. The judgment should also be read alongside the provisions in the new iteration of Rule 91 and the accompanying PD (yet to be published, but which will be out by 1 July) as to communication of information about proceedings. The issue of media access is also likely to be considered further by the ad hoc Rules Committee when it reconvenes to undertake tranche 2 of its work.

Practice Direction on Contempt of Court

The Lord Chief Justice issued on 26 March a Practice Direction on Contempt of Court which applies to all proceedings for committal for contempt of court, including contempt in the face of the court, including those before the Court of Protection. The Practice Direction emphasises the importance of open justice, and sets down the steps required to ensure that proceedings take place in public, save where exceptional circumstances dictate to the contrary, and that, in all cases, the outcome is made known in a public judgment. The Practice Direction is said to supplement Practice Directions made to accompany (inter alia) the COPR (i.e. PD21A). We suggest that it also supersedes the Practice Guidance issued by the President of the Court of Protection in 2013 available here (with a supplement here)[1]

[1] We also note that the Court of Appeal has noted that care must be taken to delineate between Practice Directions and Practice Guidance issued by the President. In *Re R (A Child)* (a decision of 24 March 2015 as yet only available in summary form on Lawtel), the Court of Appeal (considering Practice Guidance issued by the President as to transparency in the Family court), noted that it was "*dangerous for the Court of Appeal to be invited to afford that guidance greater technical status than it had.*"

Vulnerable witnesses and children working group

A working group under Hayden and Russell JJ has now reported with a number of detailed recommendations as to how the Family Division and Family Court can better address the needs of both vulnerable witnesses and children. The report makes extremely interesting reading, and we strongly suggest that many of the recommendations are ones that are likely also to be of equal – if not greater – relevance to the Court of Protection. Pending further Court of Protection-specific guidance/Rules, can we plug again the excellent Advocates Gateway and the toolkits therein, which provide detailed and practical assistance for those who need to question witnesses with a range of difficulties and/or specific requirements as regards communication.

Short Note: the presumption of litigation capacity at work

In *Waghorn v Plymouth City Council* (unreported, Lawtel 4 March 2015), Cobb J emphasised the importance of the presumption of capacity to litigate in civil proceedings. Striking out an appeal purportedly brought by a son as litigation friend for his mother against the decision of a valuation tribunal, Cobb J noted that there had to be evidence that an individual lacked capacity and that the process had to be carefully considered (applying ***Folks v Faizey***). Perhaps unsurprisingly, he was unimpressed by a medical report that was over ten years old (and a certificate of suitability that was more than three years old), especially where there was evidence that the mother had recently executed a lasting power of attorney.

It is perhaps worth noting in this context that the rather different position in the Court of Protection – that P requires a litigation friend unless the court orders otherwise – is to be made more nuanced as of July, when the amendments to Part 17 (discussed above) mean that P no longer has to adduce evidence to prove either that they have regained or have always had capacity to conduct the proceedings. The scales are therefore perhaps to be rather less tilted against P as regards the operation of the statutory presumption of capacity than they have been to date.

Short Note: Capacity to litigate vs competence to give evidence

In the civil case of *Milroy v BT* [2015] EWHC 532 (QB), William Davis J has emphasised the difference between the capacity to conduct proceedings and competence to give evidence.

There was evidence in personal injury proceedings from a clinical psychologist and consultant neuropsychiatrist that William Davis J held was clearly sufficient to justify the appointment of the claimant's wife as his litigation friend. Counsel for BT argued that the same evidence demonstrated that that the claimant was not capable when he made his witness statement of understanding the questions which must have been put to him for the statement to be taken and/or of giving a rational account of himself. William Davis J disagreed, holding that:

> *"8.* […] *Mr Milroy undoubtedly would have considerable difficulty in dealing with the process of giving evidence in court and unassisted the evidence he gave in that context would be highly problematic. If these were criminal proceedings and he was required to give evidence, he would be the*

> *kind of witness for whom an intermediary to assist him would be essential. However, there is nothing in the evidence of Lorna Morris and/or Dr Bodani to indicate that Mr Milroy is or was incompetent to give an account of working practices at BT, of the training he received and insofar as he could recall them of the circumstances in which he came to be injured. He required the right circumstances and time to reflect on what he was saying. I am entitled to infer and I do infer that his solicitors approached the taking of his witness statement with the content of Lorna Morris's report very much in mind.*
>
> *9. His mild reduction in memory functioning is a matter to which regard must be had when assessing the reliability of Mr Milroy's evidence. In his closing submissions Mr Daniels submitted that the evidence of Mr Milroy 'must be approached with considerable caution' because of the issues surrounding capacity. That is putting it too high. I shall not ignore the medical evidence when assessing the evidence of Mr Milroy. Equally it does not provide a basis for significant caveats to be placed upon that evidence.*

William Davis also found that Mr Milroy was not in a position to give oral evidence was (a) not an issue going to admissibility; and (b) (on the facts of the case) was of limited effect as regards the weight that was to be placed upon his evidence.

This case serves as a useful reminder of a distinction that is all too easily overlooked in the Court of Protection, where the assumption is that P, because they lack capacity to conduct the proceedings, will also lack competence to give evidence. Whilst the Court of Protection is entirely able to admit, accept and act upon information from P even if they lack competence to give evidence[2] we suggest that Articles 6 and 8 of the ECHR (let alone the operation of the Equality Act 2010 and Articles 12 and 13 of the CRPD) compel a more careful consideration of whether or not P is not, in fact, able to give evidence as to the factual matters before the court – including, crucially, their own capacity to make the decisions in question.

Funding under duress

(1) MG and (2) JG v (1) JF and (2) JFG [2015] EWHC 564 (Fam) (Family Division (Mostyn J))

COP jurisdiction and powers – interface with personal injury proceedings

Summary

This case concerned an application for a costs allowance under Schedule 1 to the Children Act 1989 to fund representation and experts' fees in a private children dispute. MG and JG, a same-sex couple, decided in 2005 that they wanted a child. In 2006, MG was impregnated artificially with JF's sperm. The child, JFG, was born in 2007. It was agreed that JF would be named on the birth certificate and that JG would be a "legal step-parent" with the idea that all three (MG, JG and JF) would have equal legal parenting rights. In October 2012, serious difficulties arose in relation to the contact of JF to JFG. Conflict erupted on many fronts and contact completely broke down. MG and JG later separated. JF issued an application for a contact order and the case was due to be set down for a five day final hearing.

[2] See in this regard the express provision to be made in the new iteration of Rule 95, which picks up the decision of McFarlane J (as he then was) in *Enfield LBC v SA* [2010] EWHC 196 (Admin) and the 'work around' he gave there as to the admissibility of evidence from P.

Mostyn J was clearly of the view that it was impossible to expect MG and JG to be able to represent themselves having regard to the factual and legal issues in the case. However, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO") had removed legal aid from private law children proceedings save in those exceptional cases where domestic violence is a central feature. Thus, MG and JG were no longer eligible for legal aid funding. JF was of reasonable means and privately paying for legal representation. JFG, aged 7, was represented in the proceedings by a guardian and funded by legal aid.

Although MG and JG were not entitled to an order for costs, they were entitled by operation of the provisions of Schedule 1 to the Children act 1989 to seek an order for costs funding from JF. Mostyn J ordered that JF should pay 80% of each of the claims of MG and JG for legal representation and that in future JF should pay 80% of all professional costs in respect of therapeutic work. MG and JG would each pay 10% of such costs. Whereas MG and JG could not reasonably or realistically be expected to contribute more given their means, Mostyn J was satisfied that JF could bear the costs without undue hardship.

In respect of the expert evidence, Mostyn J ordered that the fees should be paid for in their entirety by JFG and that such fees were a reasonable charge on the legal aid certificate. Although the normal rule is that the cost is to be apportioned equally, MG and JG did not have the means to contribute and JF was already shouldering a great burden of the costs. Therefore, it was just and reasonable that JFG bear the costs of the expert evidence, whether or not he was legally aided, because these fees were being incurred primarily for his benefit.

Comment

Mostyn J recognised that ordering JF to pay over £20,000 plus 80% of the cost of future therapeutic work could be said to be "*grossly unfair*". However, it was deemed to be necessary because "*that is where the government has left him*." Mostyn J endorsed previous judicial criticisms of the Government's legal aid cuts and described it as "*a sorry state of affairs*."

It is easy to imagine similar concerns arising in COP cases. Mostyn J's remarks are reminiscent of Baker J in the COP case of *A Local Authority v M, E and A* [2014] EWCOP 33 to the effect that "[o]*ne 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*."

The position in relation to COP cases is even more parlous, however, because there is no equivalent in the COPR to Schedule 1 to the Children Act, and the COP therefore does not have the power to direct that a party to the proceedings pay all or part of the costs of any of the other parties to secure representation. Ps may be in a special position: it is, for instance, absolutely clear that the Official Solicitor cannot be compelled to act as litigation friend unless he is put in funds to instruct solicitors (and continues to be put in such funds: *Bradbury v Paterson* [2014] EWHC 3992 (QB), and the position in medical treatment cases is that the OS will not act unless the NHS Trust making the application agrees to pay half of his costs, although this simply reflects custom and practice: see *An NHS Trust v D* [2012] EWHC 886 (COP)). Family members and others who may be parties to proceedings, however, enjoy no such privileged position; we will wait with interest to

see how the Court of Protection will proceed in a case where it is clear that the lack of representation of such a party due to non-availability of legal aid will give rise to a real risk of a breach of their rights under Articles 6 and/or 8 ECHR.

As regards expert evidence, in the Court of Protection, like the Family Court, the normal rule for funding expert evidence is that costs are shared equally between the instructing parties: see COP Rule 131(5). However, where some parties are family members acting in person, it is conceivable that the COP may order expert evidence to be funded by one party, either a party with means or P where P is being publicly funded. For more detail in this regard, interested readers are referred to *JG v The Lord Chancellor & Ors* [2014] EWCA Civ 656 and the discussion at paragraphs 6.92-6.103 and 13.68-13.73 of the LAG Court of Protection Handbook.

Justice in trouble – the Justice Select Committee reports upon LASPO

In a highly critical report, published on 12 March 2015, the House of Commons Justice Committee considers the impact of the reforms to civil legal aid introduced by Part 1 of LASPO, which came into force on 1 April 2013. The reforms were introduced as part of the Government's programme of spending cuts to achieve significant savings to the legal aid budget.

The Ministry of Justice (MOJ)'s four stated objectives for the reforms were to:

- discourage unnecessary and adversarial litigation at public expense;
- target legal aid to those who need it most;
- make significant savings in the costs of the scheme; and
- deliver better overall value for money to f the taxpayer.

The report concludes that the MOJ has only succeeded in one of its four stated objectives - making significant savings in the costs of the scheme - and that the 'faulty implementation' of the legal aid changes has harmed access to justice for some litigants. The report concedes that 'at best' the changes appear to have had effect in discouraging unnecessary and adversarial litigation at public expense [182].

The report proceeds over 183 paragraphs and 54 conclusions and recommendations to criticize the Government for its failure *"in its haste to implement the changes*" to carry out adequate research into the legal aid system before introducing the reforms [11]

The Committee cautions that the underspend in the civil legal aid budget should have rung alarm bells in the MOJ and blames the MOJ for not ensuring that those eligible for legal aid are able to access it. It highlights the lack of public information about the extent and availability of legal aid, including information about the Civil Legal Advice telephone gateway for debt advice. It recommends the MOJ undertakes a public campaign to combat the impression that legal aid is almost non-existent and to provide information on accessing the gateway for advice. It also recommends that the MOJ and the Legal Aid Agency improve their communication with the providers on eligibility for and scope of legal aid criteria.

The report is particularly critical of the 'wholly inadequate' implementation of the exceptional cases scheme. It concludes that the exceptional

cases funding scheme has not done the job Parliament intended, namely protecting access to justice for the most vulnerable people in our society [45].

> *"The number of exceptional cases funding applications granted has been far below the Ministry of Justice's estimate. We have heard details of cases where the refusal of exceptional cases funding to vulnerable litigants is surprising on the facts before us. We conclude therefore that the law number of grants together with details of cases refused exceptional cases funding means that the scheme is not acting as a safety net."* [33]

Putting this in context, the latest figures from the Legal Aid Agency show that only 151 of the 2,090 applications for exceptional cases funding made between April 2013 and September 2o14 were granted. [37]

Criticism is made first of the poor quality of decision-making in exceptional funding cases and secondly of the formal Guidance for failing to give sufficient weight to access to justice in the decision making process. It notes that the legality of the Lord Chancellor's Guidance has been successfully challenged in courts (*R (Gudanaviciene) v The Lord Chancellor* [2014] EWCA Civ 1622). The report recommends that immediate steps be taken by all agencies involved to ensure the exceptional cases funding scheme is properly managed and provides the robust safety net envisaged by Parliament.

The report highlights the rise in the number of litigants in person due to the unavailability of Legal Aid and the knock on effect on the courts' resources and proceedings. The National Audit Office found in its report that the increases in litigants in person had led to an estimated £3.4 million additional costs for the MOJ in the family courts alone. There were no figures available for the effect on the civil courts. The report welcomes the steps taken by the MOJ to increase funding and support to assist litigants in person, but doubts whether these steps will be sufficient to reduce the pressure on the courts. The report recommends the development of a one-stop legal helpline able to divert inquirers to other services, or to assist with their enquiries [121]

The report also expresses concern about the failure by the Legal Aid Agency to differentiate cases involving adults lacking capacity, who require the assistance of a litigation friend, from other cases. The report notes that such cases by their very nature, concern some of the most vulnerable people in our society, whose impaired understanding means they are barred by the law from conducting litigation without assistance [110]. The Official Solicitor, as litigation friend of last resort will generally only consent to act as litigation friend if he is satisfied that his costs of so doing will be met. He cannot be compelled to act without proper funding for the costs of instructing legal representatives, or in cases in which he acts as 'in-house' solicitor, for those legal costs. Where a funding source is no longer in place the Official Solicitor or any other litigation friend is entitled to seek to withdraw from the proceedings (as recently confirmed in *Bradbury & Ors v Paterson & Ors* [2014] EWHC 3992 (QB)). This means in effect that the litigation cannot progress unless and until a way is found to represent the incapacitated person's interests in the proceedings.

The Report recommends at paragraph 110 that

> *'The Legal Aid agency adopt a policy that ensures the Official Solicitor is able to properly represent people without litigation capacity given the consequences for access to justice*

> *for highly vulnerable individuals if he cannot do so.*

However, the Report does not then go on to suggest the sort of policy the Legal Aid Agency should consider or how such a policy would apply to any other litigation friends.

The Committee reports 'deep concern' that the Governments failed to carry out research into the sufficiency and sustainability of the legal aid market which may have led to the existence of a substantial number of 'advice deserts' [88]. It urges the Ministry to carry out immediate research into the geographical distribution of legal aid providers to ensure sufficient provision to protect access to justice.

The report also raises a number of serious concerns about the operation of the changes on the number of mediations, the representation of separated and trafficked children and of cases involving domestic violence. It recommends that the MOJ review the impact on children's rights of the legal aid changes and considers how to ensure that children are able to access legal assistance [62]. The Committee also recommends that the Legal Aid Agency be given discretion to grant legal aid in appropriate cases involving domestic violence and that that the Government should fund all Mediation Information and Assessment Meetings for a year [158].

Finally the report acknowledges that there is no realistic early prospect of substantially increased funding for legal aid in the civil courts. In the Committee's view this makes it all the more important that the recommendations contained in the report and highlighted above are implemented. In the longer term, it recommends that proper research in the costs and effects of the scheme should inform a more fundamental review of the policy [183].

`

Conferences at which editors/contributors are speaking

Socio-Legal Studies Association

Alex is presenting a paper on "(Re)presenting P before the Court of Protection" and Jill a paper on "Addressing the *Bournewood* gap in Scotland" at the SLSA 2015 Annual Conference at the University of Warwick 1-2 April.

Commonwealth Legal Education Association

Jill will be presenting (with Rebecca McGregor) a paper on "Access to equal recognition before the law for persons with mental disabilities through supported decision making in Scotland" at the Commonwealth Legal Education Association 2015 conference in Glasgow 9-10 April.

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.

Medical Issues and the Mental Capacity Act 2005

Tor will be speaking at a conference arranged by Clarke Willmott on 24 April, her topic being "The Court of Protection and medical treatment disputes: avoiding court and what happens if you can't." Full details of the conference are available 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 May. 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.

David Barnes
Chief Executive and Director of Clerking
david.barnes@39essex.com

Alastair Davidson
Senior Clerk
alastair.davidson@39essex.com

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

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

London 39 Essex Street, London WC2R 3AT
Tel: +44 (0)20 7832 1111
Fax: +44 (0)20 7353 3978

Manchester 82 King Street, Manchester M2 4WQ
Tel: +44 (0)161 870 0333
Fax: +44 (0)20 7353 3978

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

For all our services: visit www.39essex.com

Editors
Alex Ruck Keene
Victoria Butler-Cole
Neil Allen
Annabel Lee
Simon Edwards (P&A)

Guest contributor
Beverley Taylor

Scottish contributors
Adrian Ward
Jill Stavert

CoP Cases Online

Use this QR code to take you directly to the CoP Cases Online section of our website

THE QUEEN'S AWARDS FOR ENTERPRISE INTERNATIONAL TRADE 2013

Alex Ruck Keene
alex.ruckkeene@39essex.com

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' (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
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. 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
neil.allen@39essex.com

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
annabel.lee@39essex.com

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
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.

Contributors: Scotland

Adrian Ward
adw@tcyoung.co.uk

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.

Jill Stavert
J.Stavert@napier.ac.uk

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.