Essex CHAMBERS

MENTAL CAPACITY REPORT: PRACTICE AND PROCEDURE

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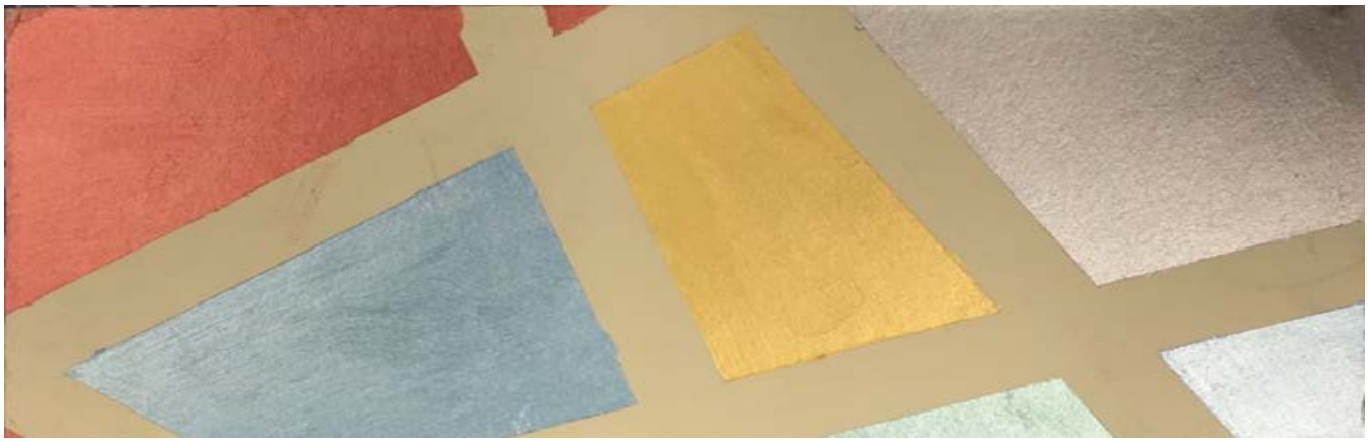

Welcome to the February 2017 Mental Capacity Report. You will note a new look, and also a new title, which reflects the fact that over the years we have evolved to carry material that goes considerably wider and deeper than in a conventional Newsletter. We have also retitled the individual sections of the Report (which you can continue to get in compendium and screen-friendly forms).

Highlights this month include:

(1) In the Health, Welfare and Deprivation of Liberty Report: positive obligations under Article 5, deprivation of liberty in the intensive care setting, and best interests in the context of childbirth and anorexia;

(2) In the Property and Affairs Report: common mistakes in making LPAs;

(3) In the Practice and Procedure Report: costs in medical treatment; an important case on time-limits in HRA cases, frustrating the Court of Protection and the end of era marked for the Court of Protection Practice;

(4) In the Wider Context Report: a new MCA/DOLS resource, capacity and the MHT, restraint in the mental health setting, mental health patients in general hospitals and truth and lying in dementia;

(5) In the Scotland Report: solicitors claiming an interest and the *nobile officium* comes to the rescue.

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

Scottish Contributors
Adrian Ward
Jill Stavert

You can find all our past issues, our case summaries, and much more on our dedicated sub-site here. 'One-pagers' of the cases of most relevance to social work professionals will also shortly appear on the SCIE website.

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

Contents

Costs and medical treatment

MR v (1) SR (by her litigation friend the OS) (2) Bury Clinical Commissioning Group [2016] EWCOP 54 (Hayden J)

CoP jurisdiction and powers – costs

Summary

This is a short judgment from Hayden J on the issue of costs arising from *Re N* [2015] EWCOP 76 (a medical treatment case to decide whether it was in the best interests of Mrs N who had MS to continue to receive life sustaining treatment).

Hayden J set out the principles briefly: (i) s.55(1) MCA 2005 provides that costs are in the Court's discretion; (ii) the general rule provides that in welfare cases there should be no order for costs (rule 157 of the Court of Protection Rules 2007); and (iii) factors to consider when departing from the general rule are non-exhaustively set out in rule 159.

Hayden J noted that the factors in Rule 159 such as 'conduct', 'manner of response', and 'success' were difficult to apply and were not wholly apposite to a case which ultimately had an investigative, non-adversarial complexion.

The judge identified the central complaint as being that the family should never have been put in a position where they were forced to make the application to the court in the first place and in consequence of the CCG's failure to follow Royal College of Physicians National Clinical Guidelines.

Noting that the determination of costs is not a precise science, but an intuitive art reflecting the Judge's feel for the litigation as a whole and refusing to 'deconstruct the particular instances of the CCG's un-reasonability', Hayden J held that the CCG's conduct had involved avoidable delay and a disturbing disregard for National Guidelines. He further held that the fact that N's daughter had to bring the application meant that she had incurred considerable costs which she should not have had to do.

Citing *London Borough of Hillingdon v Neary & Others* [2011] EWCOP 3522; *North Somerset Council v LW, University Hospital, Bristol NHS Foundation Trust* [2014] EWCOP 3 and *Re G* [2014] EWCOP 5, the judge held that the CCG should be responsible for meeting half the applicant's costs.

Comment

There are relatively few reported judgments on the issue of departing from the usual rule in welfare cases so this succinct judgment is welcome. Whilst it makes clear that each case will turn on its own particular circumstances and no gloss should be made to the legislative provisions, it also contains a judicial acknowledgment of the burdens of bringing an application as a family member rather than participating where the application is brought by the CCG.

Claiming within time

AP v Tameside MBC [2017] EWHC 65 (QB) (High Court QBC (King J))

Article 5 ECHR – damages

Summary

Those acting for the claimant sought declaratory relief and damages of between £100,000 and £150,000 for breaches of Articles 5 and 8 for a period of 30 months' unlawful detention. The claimant was 29 years old and had learning disability resulting from Down's syndrome, no sight, some hearing loss/noise sensitivity, and little speech. Following allegations of assault he was moved from the family home in to 'respite accommodation' (which was not a care home). After 30 months he was returned home on 12 August 2013.

It was not in dispute that the limitation period under the Human Rights Act 1998 s.7 ran from that date, expiring on 13 August 2014, as the alleged deprivation of liberty was a continuing act so time began to run when that act ceased, not when it began. A letter before action was sent on 20 August 2014 and the claim was not brought until 24 February 2016. The issue for the court was whether to exercise its discretion to extend the limitation period under s.7(5) HRA which provides that:

> *Proceedings under subsection 1(a) must be brought before the end of:*
>
> *(a) the period of one year beginning with the date on which the act complained of took place; or*
>
> *(b) such longer period as the court considers equitable having regard to all the circumstances, but that is subject to any rule imposing a stricter time limit in relation to the procedure in question.* (emphasis added)

As King J observed, this provision does not identify the factors which the court should take into account. There is no predetermined list, although proportionality will generally be taken into account (para 67). The claimant's lack of capacity did not create a rebuttable presumption in favour of extending the limitation period absent exceptional circumstances (para 68) and s.28 of the Limitation Act 1980 did not provide any exception by analogy (paras 69-70). Being under a disability lacking capacity and being dependent on others to bring an HRA claim is a factor in the balance and its weight must depend on the particular facts (para 72). His Lordship went on to hold:

> *73. In my judgment the weight to be given to this 'dependency' factor will vary according in particular to when the Claimant first had someone acting on his behalf and looking after his human rights interests, and when that person came into, or was in a position to come into,*

> *possession of knowledge of the essential facts, and the expertise held by that person in identifying human rights claims…*
>
> *74. … the court must take into account that the primary limitation period under the HRA is one year, not three years, and it is clearly the policy of the legislature that HRA claims should be dealt with both swiftly and economically. All such claims are by definition brought against public authorities and there is no public interest in these being burdened by expensive, time consuming and tardy claims brought years after the event.*

The court took into account the delay in issuing proceedings, trial prejudice to the local authority, the broad merits and value of the underlying claim, likely injustice to the claimant, but not matters relating to legal aid:

> *89… The matters relating to the obtaining of legal aid or the time taken to draft pleadings cannot in themselves make it equitable to extend time to the length required in this case. Legal aid matters are ones which in principle should be accommodated within the primary limitation period…*

On the facts, the court declined to extend the limitation period so that was the end of the claim.

Comment

This decision illustrates the importance of swiftly identifying human rights issues, securing legal aid where available, and if necessary issuing a protective writ to preserve the person's position. The claim in this case was brought in the civil courts. They can also be brought in the Court of Protection, although this has been challenged in *N v ACCG* and the Supreme Court's verdict is awaited. Those representing P are likely to face a greater uphill struggle for limitation extensions where HRA claims are brought within ongoing welfare proceedings. And then there is the statutory charge to contend with. Vindicating P's human rights is no easy battle in the current climate.

Frustrating the Court of Protection?

Kirk v Devon County Council [2017] EWCA 34 (Court of Appeal (Sir James Munby P))

CoP jurisdiction and powers – international jurisdiction

Summary

This is the sequel to the decision on contempt that we reported in the December 2016 Newsletter. The Court of Appeal, you will recall, allowed Mrs Kirk's appeal against her imprisonment for contempt in the face of her refusal to enable the return of P (MM) from Portugal. It also granted permission to Mrs Kirk to appeal the underlying decision of Baker J that it was in MM's best interests that he be so returned.

The parties ultimately compromised the appeal and submitted a consent order for endorsement by the Court of Appeal essentially providing for the underlying order of Baker J to be set aside and for the issues to be reconsidered on a speedy basis. Sir James Munby P endorsed the order through gritted judicial teeth on the basis that, for the reasons set out for the parties it was the proper course to adopt and was in MM's best

interests. He made clear that in approving the order he was proceeding on the footing that:

> *i) It is futile to make any further attempt to subject Ms Kirk to coercive orders designed to obtain MM's return to this country, and the Court of Protection will not be invited to make any such order.*
> *ii) Although the Court of Protection is to re-visit the question of MM's best interests, the considered view of the Official Solicitor is, as matters currently stand, that, as Ms Butler-Cole put it, there is "no realistic prospect of MM returning to [Devon]" and "nothing further the courts here can do that has a realistic prospect of affecting MM's situation" and that "it is not appropriate to expend any more of MM's funds pursuing judgments or orders in relation to his welfare."*

Sir James Munby P felt it necessary to add more about the fact that the basis of the order was in essence Ms Kirk's continuing obduracy:

> *12. On one view of the matter, Ms Kirk has achieved her objective by remaining adamantly obdurate in the face of the court's orders; and the court now is simply caving in to her demands. It is a point which has troubled me, whatever her reasons may be for the stance she has adopted (a matter which there is no need for me to explore). I am persuaded, however, that this is not a reason why, in the particular circumstances of this case, I should refuse to approve the consent order.*
>
> *13. The long-established principle is, as I put it in Re J (Reporting Restriction: Internet: Video) [2013] EWHC 2694 (Fam), [2014] 1 FLR 523, para 52, referring to what Romer LJ had said in In re Liddell's Settlement Trusts [1936] Ch 365, 374, that:*
>
> > *"the starting point is that the courts expect and assume that their orders will be obeyed and will not normally refuse an injunction because of the respondent's likely disobedience to the order."*
>
> *As I said in Re Jones (No 2) [2014] EWHC 2730 (Fam), para 15:*
>
> > *"The normal approach of the court when asked to grant an injunction is not to bandy words with the respondent if the respondent says it cannot be performed or will not be performed. The normal response of the court is to say: "The order which should be made will be made, and we will test on some future occasion, if the order which has been made is not complied with, whether it really is the case that it was impossible for the respondent to comply with it." There is a sound practical reason why the court should adopt that approach, for otherwise one is simply giving the potentially obdurate the opportunity to escape the penalties for contempt by persuading the court not to make the order in the first place."*
>
> *That said, however, there are limits to how far the court can go in seeking to coerce the obdurate. In the first place, as I went on to observe in Re Jones:*
>
> > *"I have to recognise that the court – and this is a very old and very well established principle – is not in the business of making futile orders."*

> *14. See also the discussion on this point in Re J, paras 60-62. Secondly, it is well recognised that there will come a point when even the most obdurate and defiant contemnor has to be released, despite continuing non-compliance with the court's order. Well-known examples of this principle are to be found in In re Barrell Enterprises [1973] 1 WLR 19, 27, and Enfield London Borough Council v Mahoney [1983] 1 WLR 749, 755-756, 758.*
>
> *In this case, it is important to note, the court is not caving in at the first sign of obduracy. Ms Kirk remains seemingly determined on her course despite having been taken to prison and, indeed, despite having spent some seven weeks incarcerated in what must for her have been most unfamiliar and very unpleasant conditions. Is there any real reason to believe that a further dose of this medicine might induce compliance within the kind of time it might be appropriate, having regard to the principles in Barrell and Mahoney, to require her to serve? I very much doubt it. Further attempts at coercion are most unlikely to be successful. Pressing on as hitherto is likely to be an exercise in futility. In the circumstances the consent order marks out the appropriate way forward.*

An advice had been referred to relating to the difficulty of securing cooperation in Portugal. Whilst Sir James Munby P noted that he had not seen the advice, and that this may be the case in relation to Portugal, he:

> *… would not want it to be too readily assumed that the Court of Protection will be as powerless in other similar cases. If a similar problem arises in future, it might be worth exploring whether the foreign country would recognise and be prepared to give effect either to an order of the Court of Protection or to an authority, of the kind Ms Kirk was ordered to execute in this case, executed by a Deputy or by an officer of the Court of Protection. It is also worth bearing in mind that there have been cases where the foreign court has acted both decisively and speedily in ordering the return to this country of an incapacitated adult who had been taken abroad: see, for example, Re HM (Vulnerable Adult: Abduction) [2010] EWHC 870 (Fam), [2010] 2 FLR 1057, paras 27-29.*

Comment

It is perhaps not entirely surprising that this decision does not appear to have been the subject of the same degree of media excitement as the contempt decision. It is, however, perhaps a rather more important decision, because it illustrates the limits of the court's powers in the cross-border capacity. It may well, however, be that earlier recourse to the taking of steps to obtain recognition and enforcement of English court orders would lead to better outcomes in other cases. It is also important to understand that the mere loss of habitual residence does not lead to an ending of the jurisdiction of the court (albeit the High Court under the inherent jurisdiction) to take protective measures in relation to British nationals: see the decision of Peter Jackson J in *Re Clarke*, and Alex's recent articles on adult abduction in the Elder Law Journal (more details on request).

Jordans' Court of Protection Practice: end of an era

[*Editorial note: to mark the retirement of Gordon Ashton OBE as general editor of Jordan's Court of Protection Practice, we are delighted to be able to reproduce this slightly altered version of his introduction to the forthcoming Court of Protection Practice 2017*]

Introduction

The Mental Capacity Act 2005 was enacted after many years of consultation to almost universal acclaim. Other jurisdictions are now developing with the benefit of experience gained from those who have trod this path before them and there is a danger that ours may be found wanting. The benchmarks are International Conventions that either did not exist or were not seen as relevant when our jurisdiction was developed and which when laying down broad principles did not take into account the special circumstances of those who lack the capacity to make their own decisions.

The objective of this book is to equip Court of Protection practitioners and judges with all the knowledge they may presently need, including both substantive law and court procedure. Nevertheless, as we approach the tenth anniversary of the implementation of our legislation it can do no harm to consider a different perspective, namely that of the general public and in particular those incapacitated adults and their carers and families who may need to rely upon our jurisdiction.

The public perspective

Are we out of touch?

When I was sitting as a nominated judge I was utterly defensive of the Court both as regards where it had come from and how it was developing. Since my retirement four years ago I have found myself on the other side of the 'bench' and been more influenced by my experiences as father of a son with severe learning disabilities, financial attorney of a 90-year-old mother and now carer of a wife with Parkinson's disease. I am fearful that as lawyers we are becoming out of touch with those whom the mental capacity jurisdiction was designed to serve and that the concerns being addressed by lawyers do not reflect those of carers and families.

Social awareness

The House of Lords Committee was troubled that people do not know about the Act and, where they do know about it, they do not understand it. Could this be because we are too busy creating lawyers' law that is too complex and out of touch with the culture and practicalities of delivering care? One would expect the leading disability charities to actively promote the jurisdiction and seek to educate people as to their responsibilities to incapacitated people, yet they do not seem to be taking a lead. Their websites do not mention mental capacity on the Home page and any information tends to be buried several layers deep where you have to look for it, assuming you know what you are looking for. In its valuable Dementia Friends information sessions the Alzheimer's Society does not even mention this legislation and in a recent book *Taking Charge: A practical guide to living with a disability or health condition* Disability Rights UK merely mentions LPAs and DoLS. Neither draws attention to the

fundamental need to assess capacity and make any necessary decisions on a 'best interests' basis. Is this a mere oversight or a deliberate omission? Could it be that disability organisations see this as lawyer territory when in reality it should be part of everyday life if there is some mental impairment? These concepts may seem complex when viewed through the pages of this book, but it is not difficult to explain them in simple terms.

Human Rights

Deprivation of liberty

With impeccable legal logic our courts have identified the need for safeguards against the deprivation of liberty that may even extend to ordinary family care situations where there is local authority support. Safeguards are important to prevent adults from being detained when there is no lawful justification for this, but they are merely a distraction for those who inevitably need intensive care and supervision in their best interests. Our son Paul died at the age of 28 years in the Bournewood Gap (before it was identified) due to failures of supervision but the subsequent safeguards would not have saved him. In times of austerity the priority should be good quality care rather than an assurance that incapacitated people are not being deprived of rights that they could not decide to exercise anyway. This obsession with their human rights also overlooks those of involuntary carers who have surrendered so many of their own freedoms.

I do not worry about being deprived of my liberty in the event that I become incapable just as long as good quality care is provided by people who treat me with respect and create opportunities for me to enjoy some activity. Being cared for by uncaring persons but with more freedom than one could cope with would be a worse fate than being excessively restricted by persons providing loving though misplaced care. I would rather be deprived of my liberty than allowed to behave in an inappropriate manner that would negate everything that I had stood for during my earlier life.

Safeguarding resources

In my view it would be preferable to focus on the enforcement of human rights where necessary rather than impose universal scrutiny. Otherwise the emphasis in care provision becomes minimum restriction rather than maximum support. I favour a whistle-blowing procedure to protect those who may be deprived of more liberty than is necessary, but with someone in authority capable of responding by making a reference to the Court of Protection for judicial oversight. That is a role for the Public Guardian. There should be widespread public knowledge of this procedure as part of the culture of care so that relatives and concerned persons may blow the whistle, and a designated local official to monitor the care of those who have no such contacts. Scarce resources would then be reserved for those who might actually need protection.

There are limits to what can be achieved. What does a Judge do if satisfied that deprivation of liberty is justified but concerned about the actual care provision? In making a 'best interests' decision for the individual the Court may be restricted to the options put forward by the funding authority. In reality it is 'best choice' rather than 'best interests'. We now have

resource hungry safeguards but little has really changed in the delivery of care (apart from unduly limited funding being further depleted by the safeguards).

Disability and equality

Judicial interpretation

The UNCRPD Committee's interpretation is that the diagnostic threshold should be removed, supported decision-making is the way forward, a 'best interests' approach is inappropriate and decisions should not be delegated. How can a person who lacks capacity to make a decision be supported to do so? The outcome would inevitably be a decision steered by the supporter which amounts to delegated decision-making without the safeguards of the best interests checklist. As I have stated previously, our legislation contains all the ingredients to meet the Committee's expectations if it was interpreted accordingly, but failing this changes of emphasis could be introduced by statute following the current Law Commission consultation.

This Committee also seeks to impose a requirement to adopt the 'will and preference' of the incapacitated person, whether or not properly formed, yet none of us has freedom to follow our desires because we need to be heedful of the wishes and needs of others. Those who lack decision-making capacity are unlikely to be aware of these natural constraints. Our personal desires must be tempered by responsibilities to others, including family and carers, and should not become dominant simply because we lack capacity.

The Court process

Involving the incapacitated person

Another of the present challenges is how the Court should conduct itself. The senior Judges have struggled over whether the incapacitated individual should be made a party to any application, with the consequent need for a litigation friend. When we were first writing the Rules it was assumed that this was inevitable until I pointed out the implications especially in regard to the many uncontested property and affairs applications. My suggestion that this be a case management decision was then adopted. Rather than achieve their own objectives the parties should be constrained to address only the best interests of the person to whom the proceedings relate and the judge is the ultimate arbiter of this. If all concerned individuals have the opportunity to be involved, usually enough will emerge from this to make expensive and time-consuming independent representation by a litigation friend unnecessary.

My 'tea parties'

When sitting in the former Court of Protection I always endeavoured to meet the 'patients' (now 'P"). I included in my directions Orders that they should be "*enabled to attend any hearing if such attendance would not be too distressing or detrimental to health*". I explained to the Rules Committee that when it seemed appropriate we would have an informal chat in chambers over a mug of tea (whilst leaving my recording equipment running) and I would explain at a resumed hearing what had transpired. I requested that this be facilitated in the Rules but was told that it was not the role of a judge – as if there was no difference between a criminal

judge and an incapacity judge. Surely s. 4(4) of the 2005 Act which provides that a decision-maker "*must … permit and encourage the person to participate … as fully as possible*" applied to the Judge too! The practice of judges seeing the subject of proceedings (whether children or 'P') without making them a party now seems to be finding favour but guidelines are needed.

Public hearings

More than 50 years in the law have taught me that times change and that which was deemed inappropriate yesterday may become the norm tomorrow. That is illustrated by the approach to private hearings on which I still have mixed feelings. I would feel more tolerant to admitting the press and public to contested hearings if earlier directions hearings were held in private and included more emphasis on dispute resolution. Families would then have the potential to resolve issues without being in the public gaze. The role of a judge has evolved from conducting trials if and when parties chose to bring their issues before the court into being a facilitator of settlements with a trial being the last resort. Dispute resolution hearings have become the norm in matrimonial and even some Chancery cases. There is a greater role for the Public Guardian here (which has not yet been adopted) but caution must be exercised because placating the parties does not always achieve the 'best interests' of 'P'.

Accessible justice

Judgments of the High Court are needed to interpret our law in particular for high profile cases and inevitably there are those who wish or need to achieve a 'Rolls Royce' trial before a High Court Judge sometimes as a prelude to a test case appeal. These cases receive all the publicity but represent merely the tip of a large iceberg for this jurisdiction and the public should not believe that this is the norm in the Court of Protection. The reality is that most of the work is conducted throughout the country by nominated District Judges and Circuit Judges with little specialist legal representation. A 'small claims' inquisitorial approach in a local courtroom will often resolve matters to the satisfaction of those involved. The real benefit of a regional Court of Protection is that local solicitors and barristers are becoming involved and providing a service to their own clients.

Personal reflections

Some theorise about rights and autonomy and others worry about vulnerability and protection - it depends upon your perspective. The Mental Capacity Act lays down principles and the Court of Protection handles disputes and uncertainty but a legal jurisdiction cannot provide all the answers. Attitudes within families and society need to change and the implementation of our jurisdiction is helping to achieve this although progress is slow. Those who lack capacity to make their own decisions are dependent on others and what really matters is whether there are people who care about their welfare and there is adequate funding to meet their needs.

For more than 25 years I have dreamt of and worked for a jurisdiction that would resolve the vacuum in decision-making for those who lack capacity. Has my dream become a reality or is it turning into a nightmare? It all depends upon the approach of the lawyers and many other professionals who become involved. Will this be legalistic or pragmatic? A judicial outcome that

does not work is of less value to those involved than a compromise that does.

Gordon R Ashton OBE
Grange-over-Sands
January 2017

Forced marriage protocol

December saw the publication of a new Protocol on the handling of 'so-called' Honour Based Violence/Abuse and Forced Marriage Offences between the National Police Chiefs' Council and the Crown Prosecution Service. The protocol identifies matters that should be considered in forced marriage cases and cross-refers to the wealth of guidance and other materials that exists in this area. This is relevant to Court of Protection cases both because marriages entered into without capacity to contract are to be considered forced marriages, even without any element of coercion (s.121 Anti-social Behaviour, Crime and Policing Act 2014), and because of the very clear statement of Parker J as to the duties upon social work and medical professionals to take active steps to secure against the risk of such forced marriages, especially where there is any risk that the person will be taken out of England and Wales.

Court of Protection Practitioners Association Website

The website of CoPPA, of which Katie Scott of 39 Essex Chambers, is now the chair of the London sub-group, is now live and can be found here. CoPPA is a multi-disciplinary organisation whose aims are to consolidate good practice and develop good practice in the Court of Protection and in the implementation of the Mental Capacity Act 2005.

Editors and Contributors

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Alex is recommended as a 'star junior' in Chambers & Partners for his Court of Protection work. He has been in cases involving the MCA 2005 at all levels up to and including the Supreme Court. He also writes extensively, has numerous academic affiliations, including as Wellcome Trust Research Fellow at King's College London, and created the website www.mentalcapacitylawandpolicy.org.uk. He is on secondment to the Law Commission working on the replacement for DOLS. To view full CV click here.

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

Anna Bicarregui: anna.bicarregui@39essex.com

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 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.

Adrian Ward: adw@tcyoung.co.uk

Adrian is a Scottish solicitor, a consultant at 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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Jill Stavert is Professor of Law, Director of the Centre for Mental Health and Incapacity Law, Rights and Policy and Director of Research, The Business School, Edinburgh Napier University. Jill is also a member of the Law Society for Scotland's Mental Health and Disability Sub-Committee, 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 2015 updated guidance on Deprivation of Liberty). To view full CV click here.

Conferences

Conferences at which editors/contributors are speaking

Royal Faculty of Procurators in Glasgow

Adrian will be speaking on adults with incapacity at the RFPG Spring Private Law Conference on 1 March 2017. For more details, and to book, see here.

Seminar on Childbirth and the Court of Protection

39 Essex Chambers is hosting a seminar in conjunction with the charity Birthrights about caesarean-section cases in the Court of Protection. The seminar aims to take a critical look at these cases, with a distinguished multi-disciplinary panel. The seminar is at 5pm-7pm on 8 March 2017, and places can be reserved by emailing beth.williams@39essex.com.

Hugh James Brain Injury conference

Alex will be speaking at this conference aimed at healthcare professionals working with individuals with brain injuries and their families on 14 March. For more details, and to book, see here.

Scottish Paralegal Association Conference

Adrian will be speaking on adults with incapacity this conference in Glasgow on 20 April 2017. For more details, and to book, 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.

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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