



Welcome to the June 2017 Mental Capacity Report. Highlights this month include:

(1) In the Health, Welfare and Deprivation of Liberty Report: standing in the shoes of P in a difficult decision as to cancer treatment, s.21A and the LAA, Welsh DoLS and Sir James Munby P on the warpath;

(2) In the Property and Affairs Report: Charles J puts statutory wills under the spotlight and new OPG guidance on travel costs;

(2) In the Practice and Procedure Report: the minutes of the Court of Protection Court Use Group;

(3) In the Wider Context Report: an election corner special report, new resources for GPs and about ADRTs, psychiatric treatment under scrutiny from Europe and moves to secure greater cross-border protection for adults;

(4) In the Scotland Report: important perspectives on supported decision-making, independent living and legislative reform;

Remember, you can find all our past issues, our case summaries, and more on our dedicated sub-site [here](#), and our one-pagers of key cases on the SCIE [website](#).

You are also invited to our 10th birthday party for the MCA 2005 to be held on 29 June, with the keynote speech to be delivered by Baker J and a packed programme of talks and masterclasses concerned with key aspects of the Court of Protection's work and future. For details, and to book, see [here](#).

Editors

Alex Ruck Keene
Victoria Butler-Cole
Neil Allen
Annabel Lee
Anna Bicarregui
Nicola Kohn
Simon Edwards (P&A)

Scottish Contributors

Adrian Ward
Jill Stavert

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

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Court of Protection User Group Minutes

These have now been published and are available [here](#). The next meeting, which is open to anyone who wishes to attend, will be held on 11 October 2017 at First Avenue House in London.

in much the same way as a Deputy appointed under the MCA 2005. It is unclear as yet when the Act will be brought into force.

Serious Medical Treatment cases and litigation friends

As reported by (amongst others) the *Guardian*, the mother of a woman in her 50s has been appointed as litigation friend in proceedings designed to secure a determination that the continued provision of life-sustaining treatment is not in her best interests.¹ It will be very interesting in due course to see how – if at all – the presentation of the case on her behalf will differ from that adopted by the Official Solicitor, who, to date, has almost invariably acted as litigation in friend in such cases.

Potential new role for the Court of Protection

It is possible that the Court of Protection will be designated as the court which can appoint a guardian for a missing person under the Guardianship (Missing Persons) Act 2017 (the other alternative being the High Court: see s.23(1)). The Act enables the appointment by the court of a person (“the guardian”) to act for a missing person, who, by reason of being missing, is not able to act in relation to his or her property and financial affairs. The guardian will be supervised by the Office of the Public Guardian and will be required to file accounts

¹ Tor being instructed by the mother on her daughter’s behalf, she has not had input into this note.

Editors and Contributors



Alex Ruck Keene: alex.ruckkeene@39essex.com

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. 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. 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](#).

Editors and Contributors



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](#).



Nicola Kohn: nicola.kohn@39essex.com

Nicola appears regularly in the Court of Protection in health and welfare matters. She is frequently instructed by the Official Solicitor as well as by local authorities, CCGs and care homes. She is a contributor to the 4th edition of the *Assessment of Mental Capacity: A Practical Guide for Doctors and Lawyers* (BMA/Law Society 2015). 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](#).



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

Jill Stavert is Professor of Law, Director of the Centre for Mental Health and Capacity Law and Director of Research, The Business School, Edinburgh Napier University. Jill is also a member of the Law Society for Scotland's Mental Health and Disability Sub-Committee, 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

Essex Autonomy Project Summer School

Alex is speaking at the Essex Autonomy Project Summer School in July, which this year has the theme *Objectivity, Risk and Powerlessness in Care Practices*. The multi-disciplinary programme will give delegates the opportunity to discuss the challenges of delivering care in a framework that supports and empowers individuals. For full details, and to apply online, please see the [Summer School website](#).

Deprivation of Liberty Safeguards: The Implications of the 2017 Law Commission Report

Alex is chairing and speaking at this conference in London on 14 July which looks both at the present and potential future state of the law in this area. For more details, 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 the dementia charity [My Life Films](#) in return for postings for English and Welsh events. For Scottish events, we are inviting donations to Alzheimer Scotland Action on Dementia.

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

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

Michael Kaplan
Senior Clerk
michael.kaplan@39essex.com

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

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



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

LONDON

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

MANCHESTER

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

SINGAPORE

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

KUALA LUMPUR

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

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