MENTAL CAPACITY REPORT: SCOTLAND

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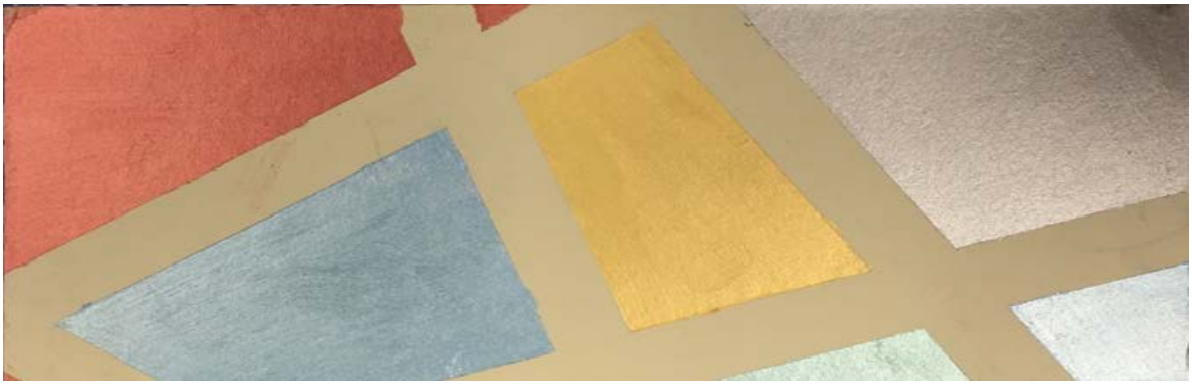

Welcome to the May 2023 Mental Capacity Report. Highlights this month include:

(1) In the Health, Welfare and Deprivation of Liberty Report: LPS on the shelf; fluctuating capacity and the interface under the judicial spotlight;

(2) In the Property and Affairs Report: the new surety bonds structure and an update on the Powers of Attorney Bill;

(3) In the Practice and Procedure Report: reporting restrictions and the Court of Appeal, and costs in serious medical treatment cases;

(4) In the Wider Context Report: DNACPR notices and disability, litigation capacity, the new SCIE MCA database, and Ireland commences the 2015 Act;

(5) In the Scotland Report: problems of powers of attorney in different settings and a very difficult Article 5 choice.

You can find our past issues, our case summaries, and more on our dedicated sub-site here, where you can also sign up to the Mental Capacity Report.

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

Contents

Four items on the common theme of difficulties with powers of attorney

Items (a) and (b) below concern difficulties arising from the creation and registration of powers of attorney, including the drafting of power of attorney documents. Items (c) and (d) are concerned with powers of attorney that have been properly created, but where difficulties are encountered in their operation – put technically, in recognition and acceptance by third parties, often characterised in "lawyer-language" as recognition and enforcement, but of course what granters and attorneys are entitled to expect, but are too frequently discriminatorily denied, is that powers of attorney be operated without encountering unnecessary and improper obstructions from third parties. Item (c) reports two German cases which taught salutary lessons to at least two institutions guilty of such conduct, the principles established by each being directly relevant to practice here. Items (a), (b) and (d) are all matters which we shall follow, with a view to reporting further as they develop.

(a) Inadequate drafting of powers of attorney

It is a decade since it was held in *Application in respect of S*, 2013 SLT (Sh. Ct.) 65, that the power of attorney document before the court in that case was not fit for purpose, and that it was accordingly necessary to grant a guardianship order. The deficiencies in the drafting of the power of attorney document appear to have defeated what must be presumed to have been the intentions of both granter and attorney in creating the document and accepting appointment. That case concerned a power of attorney document granted in 1998. One might have hoped that any further such issues coming to light might also relate to documents granted some considerable time ago, but one would be disappointed. It appears that issues continuing to arise because of inadequate drafting of power of attorney documents where joint attorneys are appointed, to the extent that the Public Guardian recently presented to Paisley Sheriff Court an application under section 3(3) of the Adults with Incapacity (Scotland) Act 2000 seeking the court's directions as to the proper interpretation of a power of attorney document which appointed two attorneys without any provision at all as to the extent to which they were required to act jointly, or alternatively could act individually, nor as to whether one was authorised to continue to act alone if the other should for any reason cease acting. One has to record considerable surprise that these most fundamental points were not addressed in the document: and even greater surprise that, that application having been withdrawn because it was ascertained that the granter still had adequate capacity – if so minded – to address the deficiencies, the Public Guardian was able to identify another power of attorney document with similar deficiencies which, we understand, is likely to be the subject of a similar application by her in the near future.

Section 62 of the 2000 Act applies only to joint guardians, not to joint attorneys. A joint guardian may act individually subject to consulting the other guardian, unless consultation would be impracticable in the circumstances, or the joint guardians agree that consultation is not necessary (sections 62(6) and (7) read together). Where there are joint guardians, a third party in good faith is entitled to rely on the authority of any one or more of them (section 62(9)). Joint guardians are liable for any loss or injury caused to the adult arising out of that guardian's own acts or omissions, or that guardian's failure to take reasonable steps to ensure that a joint guardian does not breach any duty of care or fiduciary duty owed to the granter (section 62(6)). Joint attorneys may however seek directions from the sheriff under section 3 of the 2000 Act, notwithstanding that section 62(8) explicitly provides that in the case of joint guardians only.

What is the minimum necessary for a power of attorney document? Styles are of course only a starting-point, which might be useful for guidance, but in every case the drafter takes responsibility for the document actually produced in that case. I still have my own bank of standard styles as I held them at the point when I ceased practising in 2016. Drafting power of attorney documents involves a substantial range of knowledge and skills, and I still hold 23 styles of power of attorney documents. For the minimum necessary, there are the styles relevant for granters whose ability to exercise their legal capacity is dependent upon substantial support, and thus – in any draft document – simple language. For appointment of joint attorneys, I started with this:

> *They must consult with each other, but either may act alone if the other agrees [# optional but they may only act jointly in # specify]. If for any reason one of them ceases to act as my attorney, the other may act alone in all matters.*

There can of course be several combinations of one or more attorney and one or more substitutes. Still taking the relatively simple situation of two attorneys and one substitute, but with more comprehensive drafting, my styles include one with the following three clauses:

> *One I hereby nominate and appoint my #, #, residing at #, and #, #, residing at # (hereinafter called "my First Attorneys") to be my true and lawful attorneys with the powers aftermentioned.*
>
> *Two I hereby nominate and appoint as my substitute attorney to act as my attorney in the event of either or both of my First Attorneys for any reason not taking up office as my attorney or at any time and for any reason ceasing to act as my attorney, #, residing at # (hereinafter called "my Substitute Attorney") with the powers aftermentioned, declaring (a) for so long as my First Attorneys are my joint attorneys, or either one of my First Attorneys together with my Substitute Attorney are my joint attorneys, such joint attorneys shall act in consultation with each other but either may act alone if and to the extent that the other has so agreed, except that they may only competently act jointly in entering any contract or executing any document relating to heritable property, in any acts or decisions concerning any gift, renunciation, lending or borrowing, in commencing and/or pursuing any judicial or other proceedings, and in making any appointment and/or authorising any remuneration or reimbursement in terms of the powers set forth in paragraphs # of the Schedule hereto, (b) that if any one of my First Attorneys or my Substitute Attorney shall be or become my sole attorney, such sole attorney may act alone in all matters and the foregoing provision (a)*

shall not apply.

Six I provide and declare that all acts and deeds done or granted by my Attorneys and all decisions made by them in virtue of the powers hereby conferred shall be as valid and binding as if done, granted or made by myself; that in matters where my Attorneys are required to consult with each other the acts, deeds and decisions of each shall be so valid and binding in questions with third parties whether or not they have so consulted, and third parties shall not require to enquire as to whether they have so consulted; that except where in terms hereof anything requires to be done, executed or decided by more than one Attorney, third parties may accept without further enquiry a statement by an Attorney that that Attorney is at the time my sole Attorney or that that Attorney has been authorised by any other Attorney to act alone in the matter in question; and that persons paying money or transferring property to either of my Attorneys shall not be concerned with or be bound to see to the application thereof; and I bind myself to ratify, approve of and confirm all that my Attorneys shall do or cause to be done in virtue of the powers herein contained.

(b) McFadyen case

In January, Sheriff Fife at Edinburgh Sheriff Court issued a judgment not yet posted on the scotcourts website at time of writing. We understand that it is likely to be published on the scotcourts website in the near future, following which we shall report on it. It is understood that interesting features include a general practitioner confirming to a certifier that an adult had capacity to grant a power of attorney document that was promptly registered, but the GP changed his mind about that a week later; and also that of the three joint attorneys appointed, only one accepted appointment, two others having accepted appointment under a previous power of attorney, but not the document in question. Those features have been described to me, but cannot be verified until the judgment becomes available.

(c) Powers of Attorney Bill

I commented in the March Report on aspects of the Powers of Attorney Bill, a UK Bill. I understand that the Bill has now completed its passage through the House of Commons with relevant provisions still limited to addressing difficulties about operability of English powers of attorney elsewhere in the UK, for which there is no evidence, but not equivalent difficulties with the operability of *inter* alia Scottish powers of attorney when presented in England & Wales, or to branches in Scotland of institutions headquartered in England & Wales, for which there is ample evidence. It is understood that attempts may be made in the House of Lords to remedy this imbalance by amending relevant provisions to apply equally across the United Kingdom.

(d) Enforcement of powers of attorney – two German examples

It is not only within the United Kingdom, nor only in relation to cross-border use of powers of attorney, that difficulties are encountered. Whether in a cross-border situation or not, standard advice where difficulties are encountered in having powers of attorney accepted and operated is that one should threaten enforcement action in which an award of expenses will be sought against the relevant third party. Occasionally, even that threat does not achieve prompt compliance. It is reassuring, and helpful to practice here, to note that in two such situations arising in Germany the courts there have granted the desired order, with expenses awarded against the recalcitrant third party.

In a case before Detmold Regional Court (LG Detmold, Urt. v. 14.1.2015 – 10 S 110/14), a bank refused to make a transfer instructed by the attorney, and demanded a certificate of appointment as guardian of the adult. The court held that this demand was unlawful, because the power of attorney authorised the attorney to act in the matter. By refusing to comply as instructed, the bank had made itself liable to compensate the attorney for the costs incurred for legal representation and for the proceedings, and awarded those costs against the bank.

In a case in Hamburg Regional Court LG Hamburg, Beschl. v. 30.08.2017 – 301 T 280/17), a granter suffered from progressive cancer and was living in a hospice, unable to get out of bed. For that reason she had appointed her daughter as attorney to act for her in her financial affairs. It is understood that the mother's relevant capacity was not impaired, so that (in our terminology) this was a general power of attorney rather than a continuing one, but the practical issue was the same. The bank refused to act on the power of attorney and demanded a bank mandate. The daughter sought appointment as her mother's financial guardian. The court held that although there were no grounds in law to appoint the daughter as guardian, because of the existence of the power of attorney, it nevertheless appointed her to resolve the matter and, again, held that the bank was liable to bear the costs of those proceedings.

For forwarding these cases, and for permitting me to base my description of them on her helpful translation, I am grateful to Désirée Wollenschläger, Legal Advisor to the Central Authority for Germany, one of the colleagues in my work for the Hague Conference.

Adrian D Ward

Diagnosis alone not relevant

Even in proceedings under the 2000 Act, one may come across the fallacy that existence of a mental disorder of itself justifies an assumption, or even a finding, of relevant incapacity. A diagnosis of mental disorder, by itself, is no more relevant than a diagnosis of a broken leg. There must be evidence of resulting incapacity. Acting for an adult in respect of whom a guardianship order was sought, and who opposed the application, I have successfully pointed out that medical reports were fundamentally flawed in that after narrating the adult's mental disorder, in support of their "opinion that the condition mentioned in Part C [the mental disorder] has impaired the capacity of the adult named in Part A to make decisions about or to act …" (the wording in the prescribed form of certificate) has merely given more information about the mental disorder without linking that to any clear finding of incapacity.

This misapprehension arises in many other situations. A timely reminder of the underlying fallacy has been given in the opinion, delivered by the Lord Justice Clerk, in a decision of the Second Division of the Inner House issued on 14th March 2023 in an appeal by Dr Mina Mohiul Maqsud Chowdhury (Appellant) against the General Medical Council (Respondents). A Panel of the Medical Practitioners Tribunal Service had found that Dr Chowdhury's fitness to practise was impaired, and that his name be erased from the medical register. Dr Chowdhury submitted that that decision should be quashed, and a new Tribunal appointed to re-examine the facts, on the basis that a diagnosis of autism spectrum disorder had been made only between the impairment decision and the sanctions hearing, and that the diagnosis was likely to have had a material bearing on the Tribunal's assessment of fact, and its decision on impairment.

The issue here was the impact of the diagnosis on Dr Chowdhury's conduct in relation to the findings in fact of the Tribunal, rather than an issue of capacity in terms of the 2000 Act, but the general point of principle (I would suggest) about linkage between diagnosis and a finding central to the outcome of proceedings is the same. Relevant for the purposes of this Report is paragraph [37] of Lady Dorrian's opinion. It speaks for itself. It reads:

> *"There is a clear flaw at the centre of the appellant's approach in this case. That is that the primary focus has been on the mere diagnosis itself, rather than on the manner in which certain features of the condition affect the appellant in specific ways related to the subject matter, conduct and outcome of the proceedings. The diagnosis itself, and a recital of common characteristics which may be, or even are, found in the appellant does not advance the issue. It is always important to bear in mind that the new evidence must be examined in the context of the whole proceedings, and the evidence led during the original process. To succeed with an appeal on the basis that this constitutes fresh evidence it is vital to link it closely to the conduct and outcome of the proceedings in a way which might persuade the court that it could have a material effect on the decision. A proper and detailed analysis from the viewpoint of the appellant should be the start of this, which may or may not lead to a detailed analysis of parts of the transcripts. This is necessary not only because of the need to establish materiality, but because, as Lord Reed noted in Rankin v Jack (para 40) a step in assessing whether the grounds advanced have merit is to examine the cogency of the evidence advanced. In short, the diagnosis would not be capable of impacting on the original decision unless it manifested itself in ways which influenced or contributed to that decision."*

Adrian D Ward

Where the law, human rights and practical realities of the forensic psychiatric estate collide

Note by Sheriff Paul Reid, Advocate in respect of the Summary Complaint brought by the Procurator Fiscal of Perth against ZA

On 14th February 2023, Sheriff Paul Reid (Sheriffdom of Tayside, Central and Fife) issued a Note[1] sharing what had been learned from the management of a case involving a remand prisoner, ZA. The reason for doing so was that it is illustrative of existing tensions in Scotland between legal and human rights – in this case, Article 5 ECHR (the right to liberty) – and current demands upon the forensic psychiatric estate, particularly involving women[2]. Its highlighting of the fact that there may not always be a legal basis to continue to detain remand prisoners experiencing mental ill-health, and therefore provide safeguards for such prisoners, is worrying.

The facts

In August 2021 ZA had been charged with a number of racially motivated offences. She had been on bail until December 2022. Concerns over ZA's mental health seem to have arisen around December 2022 and at the end of January 2023 she was remanded in custody, although it is unclear why bail was revoked, and has been in custody ever since.

[1] [2023] SC per 11.

[2] Para 1.

A reading of the full facts and chronology of the hearings relating to ZA, as presented in the Note, is recommended. In summary, a Specialist Registrar in Forensic Psychiatry who examined her in prison determined that ZA lacked capacity to discuss legal matters, it was in her best interests that her mental health be assessed in a psychiatric hospital and that she was unable to instruct her solicitor or effectively participate in court proceedings. However, it also became clear that there was no possibility of a suitable bed becoming available in the near future.

By the beginning of February 2023 things had come to a head. ZA's notional trial date was imminent but she remained in prison and unassessed and had by then been in custody for 40 days which is the statutory maximum days on remand in summary proceedings before the trial must start[3].

The court therefore had three options:

(a) Start the trial

This was not possible as ZA was not present and had by then been assessed as unfit to participate in 4 proceedings.

(b) Refuse to extend the time limit

This would result in ZA being released, potentially exposing her and others to risk of harm.

(c) Extend the 40 day limit for detention

Whilst this appeared to be the 'least bad option' it was highly problematic. As mentioned, ZA had already been in custody for the maximum period she could be detained pre-trial and no hospital bed was likely to become available in the near future. The court could not lawfully permit ZA's continued detention if it became arbitrary within the meaning of Article 5 ECHR.

The court authorised the detention for seven days then, in light of there being limited information as to what would happen if ZA's was extended again, for a further seven days (at the request of the Crown) until 14 February so that there could be a hearing at which a fuller explanation could be offered about the available options for managing ZA if her detention then ended. In fact, on the same day as this last extension, the court was informed that a bed would become available shortly and the necessary order was therefore made to accommodate this.

The Scottish Ministers did subsequently present a fuller explanation of the practical, including structural, issues and concerns involved here. This highlights wider challenges that had also been raised by both the recent Independent Forensic Mental Health Review (the Barron Review) [4] and Scottish Mental Health Law Review (the Scott Review)[5] about mental health provision in Scotland. The local Health Board had responsibility for ZA's care and the Scottish Ministers 'were coordinating efforts at a national level to address what appeared to be a structural issue'[6].

The Legal and Human Rights Framework

The Law: Assessment Orders, remand and avoiding arbitrary detention

Under the Criminal Procedure (Scotland) Act 1995 the Crown must apply for an assessment order (which lasts for a period of 28 days) where it appears that the person charged with an

[3] s 147 Criminal Procedure (Scotland) Act 1995.
[4] Independent Forensic Mental Health Review, Final Report, February 2021.
[5] Scottish Mental Health Law Review (Scott Review), Final Report, September 2022.
[6] Sheriff Reid's Note, para 8.

offence has a mental disorder[7]. The Scottish Ministers may apply for an Assessment Order where a person is remanded in custody[8]. Section 52D of the Act sets out the criteria for granting an assessment order, the granting of which is in the discretion of the court. The court may itself also grant such an order where it would have done so had an application been made by the Crown or Ministers[9]. Where a suitable bed is available section 52D also allows for a person to be held for up to seven days in prison pending their removal to hospital.

However, as already mentioned, the statutory maximum days a person may be held on remand in summary proceedings before the trial must start is 40 although this period may be extended under section 147(2) of the Criminal Procedure (Scotland) Act 1995 as the sheriff thinks fit if cause is shown. That being said, any decision must, of course, be in accordance with the European Convention on Human Rights (ECHR) and Human Rights Act 1998[10].

Human Rights: what is arbitrary detention violating Article 5 ECHR?

As Sheriff Reid states in his Note, Article 5 ECHR is relevant here and, in particular, its requirement that detention is not arbitrary[11] and there must be a correlation between the ground for detention [12] and place and conditions of detention[13]. Moreover, where there is an interim detention measure pending transfer to a more appropriate place of detention then such transfer should occur speedily to an appropriately resourced setting[14]. However, he also notes that ECHR jurisprudence acknowledges that whilst significant delay in admission to an appropriate setting will clearly impact on the prospects of effective treatment there may be delays in the transfer, although these should not be unreasonable[15].

Importantly, Sheriff Reid mentions that where a structural lack of capacity has already been identified then delays of, for example, six[16] or eight [17] months would not be considered reasonable and would be incompatible with Article 5. Equally importantly, he points out that the notion of arbitrariness encompasses whether detention is indeed necessary to achieve the stated aim, detention being a serious and last resort only measure[18]. Alternative, less severe, measures should therefore also be considered[19].

Applying these frameworks to ZA and the wider problem in Scotland

It appeared to be generally agreed that it was not in ZA's or the wider public's interests that she simply be released, unsupported and unmonitored, from prison. However, Sheriff Reid was not at all comfortable with a number of aspects of this case:

1. He was unhappy with the suggestion made to him that he could effectively avoid the potential arbitrariness of detention issue by remanding ZA in custody consecutively on the various charges against her.

   I am not satisfied that such a course would be compatible with the

[7] s 52B Criminal Procedure (Scotland) Act 1995.
[8] s 52C Criminal Procedure (Scotland) Act 1995.
[9] s 52E Criminal Procedure (Scotland) Act 1995.
[10] ss 3 and 6 Human Rights Act 1998.
[11] *McKay v UK* (2006) 44 EHRR 41 at para 30; *Brand v Netherlands* (2004) 17 BHRC 398 at para 58.
[12] Article 5(1) (e) ECHR and in this case governed by *Winterwerp v Netherlands* (1979) 2 EHRR 387).
[13] *Ashingdane v UK* (1985) 7 EHRR 528 at para 44.
[14] *Bouamar v Belgium* (1988) 11 EHRR 1 at para 50.
[15] *Johnston v UK* (1997) 27 EHRR 296 at para 63; *Brand, op cit,* at paras 64-65.
[16] *Brand, op cit.*
[17] *Mocarska v Poland* [2008] MHLR 228.
[18] *Saadi v UK* (2008) 47 EHRR 17 at para 70.
[19] Sheriff Reid's Note, para 16,

> *prohibition on arbitrary detention enshrined in Art.5. Indeed, it strikes me as the very definition of arbitrary (being entirely dependent upon the happenstance of another complaint being before the court). I did not consider this option to be one that was lawfully available.*[20]

2. He was clear that there needs to be a tangible appropriate hospital bed available if the requirements of section 52D and Article 5 ECHR are to be complied with.[21]

3. He had adopted the course of extending the time limit under s.147(2) of the Criminal Procedure (Scotland) Act 1995. However, this was not without misgivings about for how long that could be done before any detention would constitute arbitrary detention thus rendering it unlawful. He had been satisfied that the line of arbitrariness had not at that stage been crossed as Article 5 ECHR requirements were being met (see above). That being said, he nevertheless had concerns over the lack of sense of urgency in finding a suitable bed apparently until the 40-day limit arrived, and it was only when the court had ultimately made it clear that it might not be able or willing to extend the detention further that a bed miraculously seemed to appear. The absence of an available bed meant that the section 52D provision allowing for a person to be held for up to seven days in prison pending their removal to hospital (see above) was not engaged but the spirit of that provision should have been respected and finding such a bed made a priority. He was also unhappy that the manner in which ZA's case had been managed meant that there was no consideration of alternatives, including community-based ones, to an Assessment Order.

> *That made it very difficult to be satisfied that detention was a last resort or to be satisfied that there were no less severe measures, which would be adequate, available (Saadi, above).*[22]

In sum, Sheriff Reid considered that these concerns:

"*…took this case much closer to the line of arbitrariness that it would otherwise have been. Had a bed not become available, I would have been unlikely to have further extended the accused's detention.*"[23]

Noting that until the Scottish Ministers address and resolve the identified issues this problem is likely to continue he therefore provides some observations [24] which might assist in the meantime when similar cases are faced. Rather than attempt to summarise them, I set them out here verbatim:

> *"a. In principle, and subject to regular and informed oversight by the court, the continued detention of a person in custody whilst they await the making of an assessment order can be compatible with the Convention.*
>
> *b. Where the sole reason for not making an assessment order is the lack of an appropriate bed, the Crown ought ordinarily to notify the relevant Health 18 Board(s) (namely, the Board responsible for healthcare in the prison and the Board where the accused would ordinarily reside if at liberty) and the Scottish Ministers.*
>
> *c. Before granting, or when reviewing, the detention of an accused in custody where an assessment order cannot be made due to lack of an appropriate bed,*

[20] Ibid, para 19.
[21] Op cit, para 20.
[22] Op cit, para 23.
[23] Op cit, para 23.
[24] Op cit, para 24.

the court should ordinarily expect to be satisfied as to the steps taken to find a bed, whether community-based alternatives to an assessment order could be appropriate and, if so, whether they are available, the timescale within which a bed is likely to become available and the accused's current condition.

d. Given an assessment order should be completed within 28 days, the court would not normally allow more than 28 days to pass at any one time without the case calling before the court (although as this case has shown, it was only shorter periods which were sought and granted).

e. Whilst input from the relevant Health Board(s), and potentially the Ministers, may be necessary, it should not be necessary for those parties to appear (and incur the associated time and cost commitment). The Crown ought to be able to liaise with those parties and present the necessary information to the court.

f. A compatibility issue should not be expected to arise before the normal period of detention has expired. Where that period has been reached, however, an application under s.147(2) may well raise a question as to whether how a public authority (namely, the court) proposes to act is unlawful under the HRA. Accordingly, before moving such an application, the Crown ought to consider the need to lodge a compatibility minute. Were an application under s.147(2) to be opposed, a compatibility minute would ordinarily be necessary."

He accepts that this may require a case to call more often than normal but the need to avoid detention becoming arbitrary is essential.[25]

Conclusion

As already mentioned, the ZA case is not an isolated one. It illustrates a wider problem of the stretched forensic mental health services across Scotland and their ability to provide appropriate and human rights-based support and safeguards for persons with mental disability. Attention has already been drawn to this by the Barron and Scott Reviews[26] and the Scottish Government and Health Boards are admittedly apparently endeavouring to address it. They must certainly do this expeditiously. Although the risk of harm to the remand prisoner and/or to others is an important consideration the deprivation of a person's liberty is a serious matter. The decision to detain a person must be a last resort, must not be taken lightly and must be proportionate and non-discriminatory. A person experiencing mental ill-health should not be left waiting indefinitely or for extended periods of time in detention waiting for assessment and appropriate support.

Whilst the matter is being resolved, Sheriff Reid's observations, which could be considered to be guidance, are helpful. I would also suggest that it would be useful if the Mental Welfare Commission for Scotland both highlights this issue and provides guidance. It would also be beneficial to consider, alongside the Article 5 ECHR issues already mentioned, a remand prisoner's right to freedom from inhuman and degrading treatment in Article 3 ECHR[27] and right to enjoy ECHR rights without discrimination as required by Article 14 ECHR. Further, whilst UN Convention on the Rights of Persons with

[25] Op cit, para 25.
[26] See, for example, Chapters 3 and 10 of the Scott Review Final Report.
[27] *MS v UK* [2012] MHLO 46.

Disabilities (CRPD) rights are not directly enforceable at national level in Scotland yet the Scottish Government is currently obliged not to act contrary to the UK's international obligations, including those as a CRPD state party, and has expressed a commitment to give legal effect nationally to the CRPD amongst other international human rights treaties. Consideration of the CRPD requirements relating to equality and non-discrimination (Article 5), liberty (Article 14), freedom from torture or cruel, inhuman or degrading treatment or punishment (Article 15) and socio-economic rights underpinning access to support and alternatives to detention should also be taken into account.

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Adrian is a recognised national and international expert in adult incapacity law. He has been continuously involved in law reform processes. His books include the current standard Scottish texts on the subject. His awards include an MBE for services to the mentally handicapped in Scotland; honorary membership of the Law Society of Scotland; national awards for legal journalism, legal charitable work and legal scholarship; and the lifetime achievement award at the 2014 Scottish Legal Awards.

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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. 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

Members of the Court of Protection team regularly present at seminars and webinars arranged both by Chambers and by others.

Parishil Patel KC is speaking on Safeguarding Protected Parties from financial and relationship abuse at Irwin Mitchell's national Court of Protection conference on 29 June 2023 in Birmingham. For more details, and to book your free ticket, see here.

Alex is also doing a regular series of 'shedinars,' including capacity fundamentals and 'in conversation with' those who can bring light to bear upon capacity in practice. They can be found on his website.

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 edition will be out in June. 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.

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