

## NEIL ALLEN

Year called 1999

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“His academic excellence in this field is a real strength, and he’s brilliant.” His ability to quickly identify those issues which may cause difficulties makes him a very helpful advocate.” “The level of his ability is beyond his years of call.”

Chambers & Partners 2017

With particular interests in human rights, mental health and incapacity law, Neil practises from Chambers, teaches undergraduate and postgraduate students, and delivers training to health, social care and legal professionals. In addition, he regularly publishes in books and journals and is Deputy Director of Manchester University’s Legal Advice Centre, and is also a Trustee for the mental health charity, Making Space.

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## PRACTICE AREAS

- Administrative & Public

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## PRACTICE AREAS

### ADMINISTRATIVE & PUBLIC

*“Intelligent and thorough, he offers an academic but accessible rights-based approach to complex welfare cases. He’s an excellent communicator.”* Chambers & Partners 2015

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## ADMINISTRATIVE LAW

In the field of judicial review, advice and representation has been provided in respect of the following issues:

- Unreasonable delay in the formulating of care plans for conditionally discharged patients and related Article 5 concerns;
- Community care assessments for failed asylum seekers and related human rights issues;
- Recall decisions by the Secretary of State in respect of conditionally discharged patients;
- The impact of the direct payments scheme on the social/health care interface.

## MENTAL CAPACITY LAW

Most of his current practice is in the Court of Protection where is instructed on behalf of individuals, local authorities and health authorities. The proceedings involve many issues including:

- Whether P's liberty is restricted or deprived for the purposes of Article 5;
- Whether liberty has been deprived in accordance with procedures prescribed by law;
- The interface between the deprivation of liberty safeguards and the Mental Health Act 1983;
- Procedural and substantive protection afforded by Article 8;
- Best interests determinations in relation to various matters including care, residence, and contact;
- Capacity determinations;
- Tenancy issues arising from supported living arrangements;
- Freedom of the press;
- The appointment of deputies.

## MENTAL HEALTH LAW

Advice has been given on a range of matters including:

- The interface between the Mental Health and Capacity Acts;
- Complex applications for discharge from high security hospitals;
- Nearest relative displacement proceedings and correlated litigation friend issues;
- Whether grounds exist to challenge tribunal decisions;
- The legality of community treatment orders;
- Community care assessments.

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## CASES

*Re X (Deprivation of Liberty)* [2014] E.W.C.O.P 25: established the streamlined procedure for judicial authorisations to deprive liberty.

*P v Cheshire West and Chester Council; P and Q v Surrey County Council* [2014] U.K.S.C. 19: meaning of “deprivation of liberty” in Article 5 ECHR.

*A Local Authority v SY* [2013] E.W.H.C. 3485: non-marriage declaration under the inherent jurisdiction; social workers can be eminently suited to provide evidence of incapacity in COP proceedings.

*GA v Betsi Cadwaladr University LHB* [2013] U.K.U.T. 280 (AAC): consent and community treatment orders.

*P v M (Vulnerable Adult)* [2011] E.W.H.C. 2778: emphasises the emotional component in the best interests analysis.

*B (Deprivation of Liberty: Validity of Authorisation)* [2010] E.W.H.C. 2508: guidance on procedural matters concerning the deprivation of liberty safeguards

*G v E and Manchester City Council and F* [2010] E.W.H.C. 621; [2010] E.W.H.C. 1115; [2010] E.W.C.A. Civ. 822; [2010] E.W.H.C. 2042; [2010] E.W.H.C. 2512: breach of Articles 5 and 8 ECHR; deputyship; costs; *Winterwerp*.

*R. (L and Others) v Manchester City Council* [2002] 1 F.L.R. 43: one of the first successful uses of the Human Rights Act 1998.

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## RECOMMENDATIONS

Recommended by Chambers & Partners for Court of Protection: Health and Welfare.

### Quotes

“His academic excellence in this field is a real strength, and he’s brilliant.” His ability to quickly identify those issues which may cause difficulties makes him a very helpful advocate.” “The level of his ability is beyond his years of call.” Chambers & Partners 2017

“Intelligent and thorough, he offers an academic but accessible rights-based approach to complex welfare cases. He’s an excellent communicator.” Chambers & Partners

“Very academic and extremely learned on the history of the law and its development. He is also fantastically approachable.” Chambers & Partners

“He is highly respected by the Official Solicitor. He has a thoughtful, analytical approach to cases and an amazing eye for detail. What he doesn’t know about deprivation of liberty isn’t worth knowing.” Chambers

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## APPOINTMENTS

### **Academic Practice**

#### **Since 2003 The University of Manchester – Senior Lecturer**

With research interests in mental health, incapacity, human rights, administrative and criminal law, Neil regularly publishes and teaches at undergraduate and postgraduate level, and lectures to psychiatric, social welfare, and legal professionals.

Having assisted the Legal Advice Centre since 2001, he was appointed as its Deputy Director in 2006 and established a dementia law clinic in 2014. His responsibilities include the supervising of students in their provision of legal advice to members of the public, covering a diverse range of legal issues including mental health, employment, and landlord and tenant matters. Occasionally he has advised on criminal appeals, one of which led to *R. v Partington* [2008] E.W.C.A. Crim. 2536, and on references to the Criminal Cases Review Commission and European Court of Human Rights.

### **Mental Health and Social Care Training**

#### **Mental Health Act 1983 courses**

Since 2006, Neil has trained consultant psychiatrists and general practitioners in the North West and North Wales and co-ordinated the section 12 courses on behalf of the National Health Service. He has also taught on the Approved Clinician courses in London, York, Nottingham and Manchester for the Royal College of Psychiatrists. In addition, the University's School of Psychological Medicine and local authorities regularly invite him to train their social workers and approved mental health professionals on all aspects of the 1983 Act.

#### **Deprivation of Liberty Safeguards courses**

He is involved in the training of best interests assessors and mental health assessors across England and Wales and he has delivered lectures on the subject for the Royal College of Psychiatrists, the Department of Health and the Welsh Assembly Government.

#### **Mental Capacity Act 2005 courses**

The Department of Health, many local authorities, health authorities, interest groups, other University departments, charities and international pharmaceutical companies invite Neil to train professionals or lecture on the subject.

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## MEMBERSHIPS

- University of Manchester's Centre for Social Ethics & Policy
- Society for Legal Scholars
- Liberty

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## QUALIFICATIONS

1998-1999 The Inns of Court School of Law, London

Bar Vocational Course – 'Very Competent' with 'Outstanding' in advocacy.

1995-1998 The University of Manchester

LL.B English Law (Hons) – Upper second-class degree with first class results in Legal History (awarded the 1998 RG Lawson prize) and in the Law of Restitution.

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## ADDITIONAL INFORMATION

### Law Books

- 'Psychiatric care and criminal prosecution' in *Medicine, Crime and Society* (2013) Cambridge University Press.
- Brazier, M., Allen, N., 'Criminalising medical malpractice' in Charles Erin and Suzanne Ost (eds), *The Criminal Justice System and Health Care* (2007) Oxford University Press.
- 'Medical or managerial manslaughter?' in Charles Erin and Suzanne Ost (eds), *The Criminal Justice System and Health Care* (2007) Oxford University Press.
- 'Necessity, Incapability and Emergency' in Steven Hedley and Margaret Halliwell (eds), *The Law of Restitution* (2002) Butterworths Common Law Series.

### Legal Journals

- 'The Right to Life in a Suicidal State' (2013) 36 *International Journal of Law and Psychiatry* 350–357.
- Allen, N. and Prescott, A., 'The opacity of sexual capacity' (2012) 2(4) *Elder Law Journal* 352-357.
- 'Criminal Care: Ill treatment and wilful neglect' (2012) 2 *Elder Law Journal* 71-75.
- 'Dare to care' (2011) 1(2) *Elder Law Journal* 167.
- 'The Bournemouth gap (as amended?)' (2010) 18 *Medical Law Review* 78-85.
- 'First do no harm. Second save life?' (2010) *Journal of Mental Health Law* 180-185.

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- David, T., Bray, S., Farrell, A.M., Allen, N., Ellson, S, 'Fitness to practise procedures for undergraduate healthcare students' (2009) 10 Education Law Journal 102-112.
- 'Saving life and respecting death: A Savage dilemma' (2009) 17 Medical Law Review 262.
- 'Is capacity "in sight"?' (2009) Journal of Mental Health Law 165-170.
- 'Restricting movement or depriving liberty?' (2009) Journal of Mental Health Law 19-32.
- 'Protecting the suicidal patient' (2008) Journal of Mental Health Law 93-100.
- 'A human right to smoke?' (2008) New Law Journal 886-887.
- 'All in the mind?' (2008) New Law Journal 848-849.
- 'Re-detention after recent discharge: A role for judicial review?' (2007) 15 Medical Law Review 253-261.
- 'A call for order' (2007) New Law Journal 241.
- 'Good faith or no faith?' (2004) New Law Journal 1170.
- 'Dunnachie – the door closes.' (2004) New Law Journal 1208.
- 'Family values' (2001) 10 Family Law Journal 18.
- 'No need to know?' (2001) 8 Family Law Journal 13.

#### **Selected Recent and Forthcoming Guest Lectures**

- North/South conference held by the Mental Health Commission, Ireland, and the Regulation and Quality Improvement Authority, Northern Ireland (December 2014): 'Responding to the Challenges: Getting it Right?'
- Welsh Assembly Government (November 2014): 'Redefining the Deprivation of Liberty Safeguards'
- Annual Mental Capacity Act Conference (York) (October 2014): 'The (not so?) Great Confinement'
- AMHPA and Cardiff Law School Annual Mental Health Act Conference (Manchester) (October 2014): 'Thoughts on the Code'
- Law Society Conference (June 2014): 'The nub of the matter: Article 8'
- International Academy of Law and Mental Health conference (July 2013, Amsterdam): 'The State's Duty to Protect the Suicidal Patient'.
- Betsi Cadwaladr University Health Board (February 2013): Mental Health Act Conference.
- Ministry of Justice round table forum (January 2012): Deprivation of Liberty Safeguards.
- International Academy of Law and Mental Health conference (July 2011, Berlin): 'The Deprivation Dilemma'.
- Action on Elder Abuse (March 2011): 'The effective use of the Deprivation of Liberty Safeguards'.
- Department of Health (November 2010): 'Recent DoLS Cases'.

#### **Positions of Responsibility**

##### **ADASS**

Adviser to the Association of Directors of Adult Social Services that has been tasked by the Department

of Health with revising the forms used for the Deprivation of Liberty Safeguards.

### **Law Society**

Adviser to the Law Society in the production of case law guidance for practitioners in respect of deprivation of liberty for the Department of Health.

### **Care Quality Commission**

Adviser to the Care Quality Commission's Deprivation of Liberty Safeguards Advisory Group.

### **Making Space**

Since 2009, Neil has worked on the Board of Trustees for this national mental health charity which works with those affected by mental illness and their carers to enable them to live a more independent and fulfilling life. He is significantly involved in 'service user involvement', dementia care, and promoting those using the charity's services to become volunteers.

### **University Fitness to Practise Panel**

Since September 2008 Neil has represented the Law School at numerous Fitness to Practise hearings.

### **Other**

Since joining the University, Neil has established the School of Law Advocacy Society as well as one of the first undergraduate advocacy courses in the country.

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