



NEIL ALLEN

Year called 1999

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“Neil’s knowledge of the whole span of mental health, community care and public law is comprehensive. He applies that knowledge with great judgement and one never doubts his analysis. He is excellent on the papers, as he is on his feet.”

Legal 500 2021

“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

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 Clinical Lead of Manchester University’s Legal Advice Centre.

PRACTICE AREAS

- Administrative & Public

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ADMINISTRATIVE & PUBLIC

"Has an encyclopaedic knowledge of all things CoP, but also very likeable and pragmatic." Legal 500

MENTAL CAPACITY LAW

Most of his current practice is in the Court of Protection where is instructed on behalf of individuals, the Official Solicitor, 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:

- Section 117 after-care disputes;
- 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.

CASES

Wakefield Metropolitan District Council & Anor v DN & Anor [2019] EWHC 2306 (Fam): inherent jurisdiction and the detention of those with capacity.

Re A (Capacity: Social Media and Internet Use: Best Interests) [2019] EWCOP 2: established the test for capacity to use the internet and social media (acted pro bono).

Re KT [2018] E.W.C.O.P. 1: established the use of Visitors to ensure a human rights compliant procedure for authorising deprivations of liberty for uncontested, unbefriended cases.

N v ACCG [2017] U.K.S.C. 22: best interests and Court of Protection case management powers (Supreme Court).

Mrs P v Rochdale Borough Council [2016] E.W.C.O.P. B1: DoLS challenge; financial deputyship.

North Yorkshire CC v MAG [2016] E.W.C.O.P. 5 and [2015] E.W.C.O.P. 64: conditions of detention.

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*.

(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.

RECOMMENDATIONS

Recommended by Legal 500 and Chambers & Partners for Court of Protection: Health and Welfare.

Quotes

“Always well prepared, a pleasant opponent and a good problem solver.” “He thinks outside of the box and puts himself into P’s shoes when he is providing advice and will fight to the death to ensure P’s rights are restricted the least amount possible.” “Very flexible, and the work that he does is of a very high quality. His knowledge base is excellent.” *Chambers & Partners* 2021

“Neil’s knowledge of the whole span of mental health, community care and public law is comprehensive. He applies that knowledge with great judgement and one never doubts his analysis. He is excellent on the papers, as he is on his feet.” *Legal 500* 2021

“He’s very academically on the ball, knows the law very well and is a very good advocate.” “He is incredibly helpful, very responsive, fantastically knowledgeable and hugely respected in the Court of Protection world.” *Chambers & Partners* 2020

“Incredible intellectual abilities; not in the least phased at the prospect of having to appear before the senior courts on complex matters, at short notice.” *Legal 500* 2020

“He brings a really great and broad perspective to cases thanks to his academic background. He has an excellent technical understanding of the Mental Capacity Act and community care law, and he is very good at dealing with both lay and professional clients.” *Chambers & Partners* 2019

“Has an encyclopaedic knowledge of all things CoP, but also very likeable and pragmatic.” *Legal 500* 2018

“Excels at Court of Protection work that involves deprivation of liberty and other human rights issues. Peers point out his academic excellence as a distinguishing characteristic, citing his role as lecturer in Clinical Legal Education at the University of Manchester. 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. An excellent communicator and reliable source of support and expertise for the firm and clients alike. He’s always willing to delve deeper into broader issues and readily offers insight into exceptionally complex issues” *Chambers & Partners* 2016

“Intelligent and thorough, he offers an academic but accessible rights-based approach to complex welfare cases. He’s an excellent communicator . Very academic and extremely learned on the history of the law and its development. He is also fantastically approachable.” *Chambers & Partners* 2015

“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 & Partners* 2014

APPOINTMENTS

Academic Practice

Since 2003 The University of Manchester – Senior Lecturer and Clinical Lead

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 is the Clinical Lead at the university’s Justice Hub and established its award-winning dementia law clinic in 2014. His responsibilities include the supervising of students in their provision of legal advice to members of the public and he is always interested in considering Court of Protection pro bono cases which raise novel points of law that provoke students’ interest, such as *Re A (Capacity: Social Media and Internet Use: Best Interests)* [2019] EWCOP 2.

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 previously 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 of Manchester 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, and charities invite Neil to train professionals or lecture on the subject.

MEMBERSHIPS

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

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.

ADDITIONAL INFORMATION

Law Books

- Chapter 9 'The tests for incapacity' and chapter 10 'Care and treatment of those lacking decision-making capacity' in Jean McHale and Judith Laing (eds), *Principles of Medical Law* (4th ed.) (2017), Oxford University Press.
- '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

- Allen, N. et al, 'Advance decisions to refuse treatment and suicidal behaviour in emergency care: 'it's very much a step into the unknown' (2019) 5(4) *British Journal of Psychiatry* 1.
- Allen, N. et al, 'The management of patients with an advance decision and suicidal behaviour: A systematic review' (2019) *British Medical Journal* (open access).
- Ruck-Keene, A., Bartlett, P., Allen, N., 'Litigation friends or foes? Representation of P before the Court of Protection' (2016) *Medical Law Review* 333-359.
- 'The (not so?) great confinement' (2015) 5(1) *Elder Law Journal* 45-51.
- '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.
- 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

Neil is regularly asked to contribute to national and regional conferences on matters concerning the Mental Health and Capacity Acts. For example:

- AMHPA and the University of Manchester's Taking Stock Conference (November 2019)
- Best Interests Assessor Conferences every year across England and Wales
- 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'
- 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'.
- Ministry of Justice round table forum (January 2012): Deprivation of Liberty Safeguards.

Positions of Responsibility

2018 Advisor on the Statutory Principles Group to Sir Simon Wessely's Independent Review of the Mental Health Act.

2009-18 Trustee of the national mental health charity, Making Space, which works with those affected by mental illness and their carers to enable them to live a more independent and fulfilling life.

2014-17 Member of the Advisory Board on the Welfare Cases in the Court of Protection **project** led by Professor Phillip Fennell.

2014-17 Law Commission – invited to contribute to the **project** on mental capacity and detention and provided submissions on necessary reforms to the Mental Health Act 1983 during its consultation exercise.

2013-16 Member of the Advisory Board to the project on suicide prevention led by Professor Navneet Kapur and funded by the National Institute for Health Research.

2014-15 Adviser to the Association of Directors of Adult Social Services that was tasked by the Department of Health with revising the **forms** used for the deprivation of liberty safeguards.

2014-15 Adviser to the Law Society with the production of comprehensive **guidance** for legal, health and social care practitioners in respect of deprivation of liberty for the Department of Health. It uses case scenarios to explain the impact of the landmark *Cheshire West* judgment in a variety of care settings. As well as my broader

editorial responsibilities, I wrote chapters 7 (supported living) and 9 (under 18s).

Since 2012 Adviser to the Care Quality Commission's Deprivation of Liberty Safeguards Advisory Group. Providing time, support, advice, and expertise has supported the independent regulator for health and social care services in its preparation of annual monitoring reports on the use of the safeguards.

Other

A finalist in the OUP's Law Teacher of the Year competition, 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. He also supervises PhD students.

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