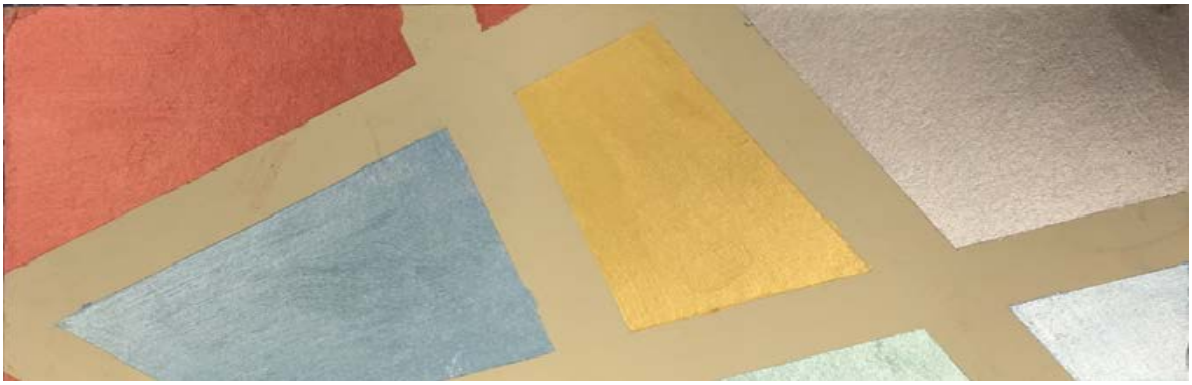
MENTAL CAPACITY REPORT:
PRACTICE AND PROCEDURE
December 2023 | Issue 137



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

(1) In the Health, Welfare and Deprivation of Liberty Report: the least worst option as regards compulsory feeding, putting values properly into the mix and the need for a decision actually to be in contemplation before capacity is considered;

(2) In the Property and Affairs Report: relief from forfeiture in a very sad case;

(3) In the Practice and Procedure Report: counting the costs of delay, guidance on termination cases, and a consultation on increasing Court of Protection feeds;

(4) In the Wider Context Report: forgetting to think and paying the price, the cost of getting it wrong as litigation friend, Wales potentially striking out alone on mental health reform, and a review of Arianna's book on social care charging;

(5) In the Scotland Report: reduction of a Will: incapacity and various vitiating factors, and an update on law reform progress.

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.

We will be taking a break in January, so our next Report will be out in February 2024. For those who are able to take a break in December, we hope that you get the chance to rest and recuperate. For those of you who are keeping the systems going in different ways over that period, we are very grateful.

Editors
Alex Ruck Keene KC (Hon)
Victoria Butler-Cole KC
Neil Allen
Nicola Kohn
Katie Scott
Arianna Kelly
Nyasha Weinberg
Simon Edwards (P&A)

Scottish Contributors
Adrian Ward
Jill Stavert

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

Short note: the requirements for termination cases

The case of *A Health Board v AZ and others* [2023] EWHC 2517 (Fam) was brought in the Family Division for orders pursuant to the court's inherent jurisdiction to terminate the pregnancy of an 11 year old who had been raped at the age of 10, by a 14 year old boy she had met on the internet. She has also been the subject of a further rape by a 14 year old boy shortly after her 11th birthday.

Although the child had initially wanted to go through with the pregnancy, by the time the matter came before the court for final hearing (by which time the child was nearly 15 weeks pregnant), both her parents and the guardian were supportive of the application brought by the Health Board for a termination. The child had accepted the need for a termination, but did not want to make the decision herself. The parties were also in support of the second part of the application, namely for a declaration that some tissue could be removed from her placenta for forensic testing in a criminal investigation.

Arbuthnot J did not hear any oral evidence, but reviewed the written evidence which came from a consultant psychiatrist, and two consultant obstetricians and gynaecologists. Arbuthnot J reiterated what has been said in the previous cases of *Re AB (Termination of pregnancy)* [2019] EWCA 1215 and *Re X (A Child)* [2014] EWHC 1871, namely that there is a two stage test to be applied in such applications. The first stage is for the doctors who must consider whether the terms of s.1 Abortion Act 1967 are met. The second stage is for the court to make a best interests decision having evaluated all the material factors.

Arbuthnot J then went on to set out all the physical risks to the child of continuing with the pregnancy (which were significant) as well as the risks to the mental health of the child arising from the pregnancy, childbirth and the care of the baby. She also considered the evidence she had of the risks and benefits to the child of medical and surgical termination. In considering this evidence, Arbuthnot J held that even though the child had accepted the need for termination, it would have been helpful for there to have been a more detailed examination of the risks to her of the termination, and the arguments in favour of continuing the pregnancy. Arbuthnot J also found that it would have been more helpful to have the risks of a surgical termination set out in more detail.

One of the factors that Arbuthnot J weighed in the balance was the high likelihood (as she

found), that the baby would be taken away from the child at birth.

Despite the child being thought to be at risk of getting pregnant again after the termination, there was no application before the court for an implant to be inserted at the same time as the termination was performed. As Arbuthnot J noted, both could be done under the same anaesthetic and would provide protection to the child from pregnancy for three years. The parties were hoping that the child would consent to this.

Arbuthnot J then went on to give some guidance (approved by the President) for such cases. In short this emphasises the need to bring applications early, even if they then have to be subsequently withdrawn, the need for early referrals to other statutory agencies so that consideration can be given as to whether the child meets their criteria for support and the need for multi-agency working.

The Guidance goes on to set out the evidence that should be provided to the court in any such application:

a. Written evidence from two registered medical practitioners who are able to address the requirements of s.1 Abortion Act 1967, preferably from two obstetricians;

b. Written evidence from a child and adolescent psychologist or psychiatrist who has met with the child to provide evidence on her *Gillick* competence to consent to any decisions regarding termination. It would be preferable for this evidence to be obtained in the absence of the child's mother and father.

c. A full best interests analysis by one of the two obstetricians. The focus of this analysis ought to be on the subject child and not on the foetus, consistent with the case law in *Vo v France* (2005) 10 EHRR 12; *Paton v British Pregnancy Advisory Service* [1979] QB 276; and *Paton v United Kingdom* (1980) 3 EHRR 408. The analysis ought to include:

   i. all options available;

   ii. a summary of the risks and benefits of each option;

   iii. the preferred option and the reason why it is preferred;

   iv. the applicant's position on any other consequential orders sought such as:

      1. sterilisation;

      2. contraception; or

      3. the retaining of any placenta tissue for the purposes of forensic investigation.

d. A care plan addressing the detailed logistics of the proposed treatment and the support that will be offered to the child prior to, during and following any sanctioned treatment. This support is to include mental health support where appropriate.

Comment

While this desperately sad case was an exercise by the High Court of its inherent jurisdiction relating to a child, the guidance contained within it is essential reading for anyone bringing a termination case in the Court of Protection. In particular practitioners are well advised to heed the emphasis on the need for proceedings to be brought early and for the urgency of the application to be stressed to the court to ensure a timely directions hearing and final hearing.

The case is also interesting for Arbuthnot J's

consideration of the child's need for contraception, even though no such application was before the court. Practitioners would do well to consider what if any steps will be required in the future to safeguard the subject matter of the proceedings, and if possible, incorporate those within the application.

The costs of delay

Re GH (Mastectomy: Best Interests: Costs) [2023] EWCOP 50 (Poole J)

COP jurisdiction and powers – costs

Summary

This matter related to GH, who was 52 and had a diagnosis of schizoaffective disorder. The substantive application sought orders that GH should undergo breast cancer surgery which were granted. However, the case is of greater interest for its findings on costs orders in serious medical treatment cases.

GH was diagnosed with breast cancer in March 2023, shortly after being released from detention under the Mental Health Act 1983 on a Community Treatment Order. GH refused treatment for her condition. She was re-detained in May 2023 for about three weeks, at which time she felt that her cancer diagnosis was a 'cover up' to avoid her receiving compensation from the NHS. A capacity assessment was undertaken on 30 June 2023 by a psychiatrist, breast surgeon and breast nurse, who concluded that she lacked capacity (at the time, she was expressing her breast lump was due to 'black magic'). She declined any care for her condition. A view was taken that an application ought to be made to the Court of Protection, and a decision was taken to recall GH to hospital for further treatment of her schizophrenia. She was re-admitted to hospital on 27 July 2023, and told that an application would be made to the Court of Protection in respect of her breast cancer treatment in early August. A re-assessment of her capacity was undertaken on 6 September 2023, reaching the same conclusion as the June assessment.

The Court of Protection application was not made on 21 September 2023; the evidence before the court was that there was a risk that the carcinoma may have grown to such an extent that it may be inoperable. The Official Solicitor had been given notice of the proposed application towards the end of the previous week. It came before Poole J on the urgent applications list on 26 September, with the Trust seeking authorisation to carry out the proposed surgery on 27 September. The court did not conduct a full hearing on the 26th, and listed the matter for a half-day hearing on 28 September, at which time GH was found to lack capacity to make the relevant decisions and the treatment plan was found to be in her best interests. A post-script notes that the recommended surgical treatment was undertaken successfully, the carcinoma was operable and treatment was achieved without the use of restraint.

Costs

The Official Solicitor made an application for a costs order for 100% of her on the grounds of excessive delay in issuing proceedings. The Trust opposed this order. It stated that the delay had been caused by a number of factors, including GH's consultant going on long-term sick leave, its lack of control over the evidence of GH's treating psychiatrist, uncertainty about GH's capacity, and general stresses on the NHS, including industrial action.

The Official Solicitor argued that "*the delay by the Applicant Trust* [was] '*unacceptable' and as having had a number of adverse consequences including that it undermined the role of the OS herself. As early as 5 May 2023 it was recorded that GH did not appear to have capacity to make decisions about her treatment….The OS is*

concerned that in too many cases of this kind (not necessarily involving this Applicant) Trusts make very late applications, thereby undermining her role" (paragraph 55).

The Trust made two arguments in response:

1. At the outset of the proceedings, the Trust had agreed, in the standard convention for Serious Medical Treatment applications, to fund 50% of the Official Solicitor's costs. The Trust argued that the Official Solicitor now sought to withdraw from that agreement, and should not be permitted to do so.

2. In any event, there were no good reasons to depart from the general rule on costs in welfare applications, because:

> *i) Satellite costs litigation should not be encouraged in this welfare jurisdiction.*
> *ii) The bar should not be set too low for departing from the general rule. The pressures on NHS trusts and very busy clinicians are such that if there is a departure on the basis of delay in making applications in such cases, there will be many such applications and the conventional arrangement will be jeopardised.*
> *iii) If there is a departure from the general rule due to conduct, then the conduct should not only be serious, but it should have very clear costs consequences. Here the OS did not incur additional costs because of the timing of the application* (paragraph 58)

By way of framework on costs, Poole J set out s.55 MCA and COPR 19.3, 19.5, 19.6 (which incorporated by reference Parts 44, 46 and 47 CPR(with modifications as set out in the COPR)) and 19.9.

In relation to the first argument, Poole J found that the agreement of the Trust to pay 50% of the Official Solicitors costs "'*is not a formal contract and, I find, it is implicit in the agreement that, depending on the circumstances as the OS later finds them to be or as they develop, the OS may in certain cases seek a costs order for more than 50%.* […] *the Trust did not rely to its detriment on the agreement and that the OS is not estopped or otherwise prevented from seeking a greater proportion or indeed the whole of her costs*" (paragraph 57).

Poole J noted the statements of Keehan J in *An NHS Trust v FG* [2014] EWCOP 30 as to the undesirable consequences of late applications. At paragraph 61, he set out how he considered that this this case, the lateness of the application had:

> *i. Undermined the role that the OS should play in the proceedings. The importance of this should not be overlooked. The OS represents the interests of GH. The OS needs time to consider the evidence, meet GH and ascertain her wishes and views, probe the evidence, ask questions, seek independent expert evidence if necessary, liaise with GH's family, and form a view of GH's capacity and best interests. The OS does not have unlimited resources and has responsibilities in many other cases.*
>
> *ii. Placed the court under considerable pressure to find precious time, on a very urgent basis, to hear the application. There was no opportunity to give directions in relation to evidence other than within a very short period from 26 to 28 September 2023. An application of this kind is very unlikely to be determined within an hour. The urgent applications list will often have six or more cases, sometimes several more, to be heard within the day. If an urgent*

application can be avoided it should be avoided. This application only became urgent because of the delay in making it.

iii. *Risked undermining open justice - this application did not appear on the list on September 2023 because of the lateness of the application. Hence, those who might have wished to observe this important application did not have advance notice of what might have been a substantive hearing on 26 September.*

iv. *Caused disruption to the surgeons, clinicians, and staff at the Trust because the planned surgery on 27 September 2023 had to be postponed and hastily re-arranged.*

v. *Contributed to a delay in treating GH. The need for surgery was known at diagnosis on 2 March 2023. The surgery took place nearly seven months later. A key performance standard for NHS England is for a 62 day period between referral and treatment for cancer (the target being for this standard to be met in 85% of cases). For a person with capacity who had refused adjuvant chemotherapy but consented to surgery (which is effectively the corresponding position for GH following my decisions above) the target date for surgery (the first line of treatment in those circumstances) would therefore have been in late April 2023, about five months before the application was made. The consequences of the delay in treatment are unknown (but see postscript below).*

Poole J did not consider that there was any bad faith by the Trust, and accepted the difficulties which had been presented by the Trust on pressures on resources within the NHS. *"However, it must have been clear, if not in early March certainly by early May, that a Court of Protection application may well be required and that, given the nature of GH's condition and the surgery required, the delays up to that point, and the pressing need for surgery to be performed sooner rather than later, expedition was required"* (paragraph 63). The court did not accept that the reasons given by the Trust justified the delay.

Polle J accepted that the Official Solicitor would have incurred costs in any event, and likely would have incurred more costs had the application been timely, as there would have been more opportunity to work on the matter. However, Poole J found that applying CPR 44.11 (via COPR 19.6), a costs order can be made that is not entirely compensatory, even if there is not misconduct. Poole J likened the conduct of the Trust to being "*close to that of a party who has been successful in civil litigation but who had unreasonably refused to mediate,*" (paragraph 66) which has been recognised by courts "*as being conduct that justifies a departure from the usual order that costs follow the event* […] *Such costs orders will not require payment of costs over and above the costs actually incurred, but they are not purely compensatory because it cannot be known with certainty what costs would have been incurred had mediation taken place.* […] *The costs order is designed to encourage appropriate pre-issue conduct*" (paragraph 66).

Poole J found it was appropriate to deviate from the general rule on costs where the Trust's "*pre-issue conduct undermined the role of the OS and prevented pre-issue work which may or may not have helped to resolve some of the issues which the making of the application required the court to determine. Just as an unreasonable failure to mediate can justify a departure from an order that costs follow the event in civil proceedings, even if the costs incurred may have been incurred had*

mediation taken place, so, in my judgment, a failure to issue an application in the Court of Protection in relation to a question of serious medical treatment within a reasonable time, may justify a departure from the general rule as to costs even if another party's costs may not have been avoided had the application been brought timeously" (paragraph 67). Poole J considered that the Trust's conduct had also been unreasonable in *"exposing GH, whose interests the OS represents, to a risk of harm*" (paragraph 68).

In determining what costs order should be made, Poole J accepted "*that in exercising a discretion as to costs the court should consider what costs might have been incurred in any event but that is not an accounting exercise in a case such as this*" (paragraph 69). The judgment set out that there had been an existing agreement for the Trust to pay 50% of the Official Solicitor's costs in any event. Poole J considered that assessing costs as a 'broad brush' exercise, which took into account "*all the circumstances which include the degree of unreasonableness and the extent of the delay, the impact of the delay on GH and the OS, the costs actually incurred by the OS and to what extent those costs have been incurred as a result of the paying party's default. Exercising my discretion I am sure that an issue based costs order would not be appropriate and I do not have adequate information on which to make an award for a fixed amount of costs. I take into account my power to order assessment of costs on the standard or indemnity basis. In my judgment an appropriate order is for the Applicant Trust to pay 80% of the OS's costs of and occasioned by the application to be assessed on the standard basis if not agreed. An order for 100% of costs might have been made if the Trust's failings had been egregious and/or the consequences, including the costs consequences, for the OS even more serious*" (paragraph 70).

Comment

The case is a rare example of an order for costs being made against a public body in welfare proceedings. We would note the differing approaches taken by Poole J here and DHCJ Vikram Sachdeva KC in *West Hertfordshire Hospitals NHS Trust v AX (Rev 1)* [2023] EWCOP 11, on what was essentially a very similar application by the Official Solicitor for costs in a case where there were significant delays and the case was brought on an urgent basis. In the earlier case, DHCJ Sachdeva had emphasised previous case law cautioning against costs orders in welfare cases, and despite the Trust having failed to follow the guidance in *FG*, which had caused prejudice to P and impacted on the work of the Official Solicitor and court in scrutinising the application, the court found it would not have made a costs order. DHCJ Sachdeva considered that the test for departure from the general order on costs was relatively high (applying a standard in line with 'significantly unreasonable' conduct), and that the court could express disapproval of a party's case in manners other than a costs order. In both cases, the courts acknowledged the fact-specific nature of costs applications and courts considering the complete circumstances of the case, and it may be that neither case would be particularly persuasive as authority in future applications for costs.

Short note: closed contempt

In *Lincolnshire County Council v X & Ors* [2023] EWCOP 53, HHJ Tucker proceeded in the absence of respondents to a committal for contempt arising out of Court of Protection proceedings, specifically a breach of an injunction regarding contact with P. In an immediately preceding judgment, *Lincolnshire County Council v X & Ors* [2023] EWCOP 52, HHJ Tucker had acceded to an application to deviate from the norm of hearing the contempt

application in public, on the basis that it was

> *60.* […] *necessary to sit in private to protect the interests of X as set out in COPR 2017 r.21.8(4)(d). Further, I consider that it is necessary to do so to secure the proper administration of justice pursuant to r.21(8). If the proceedings are not held in private I consider that part of the harm the proceedings before the Court seek to prevent would, in fact, be caused by proceedings themselves.*

HHJ Tucker did not determine the question of whether the contemnors should be named, deferring the question until after the committal hearing. She also set out the concerns of Professor Celia Kitzinger of the Open Justice Court of Protection Project as to the difficulties that members of the public have about finding out about committal hearings which are to be held in private, and noted that she would "*to provide a commitment, however, to ensuring that the practical arrangements of this Court follow* [the guidance] *set out in the Esper*" case about such matters, the case having been handed down very shortly before the hearing.

HHJ Tucker found that the respondents had "*acted with complete disregard for the Court orders, in a persistent and sustained manner. Their lack of participation in the Court proceedings and past evidence of evading service gives me little confidence that anything short of a custodial sentence will secure their compliance with the Court's Orders. In addition, I consider that the custody threshold is crossed by the breaches I have found to be proven* […]." She suspended the sentences on condition that there was complete compliance with the injunction. The contemnors not being named, it appears that HHJ Tucker must (implicitly) have reached the conclusion that they should not be.

Short note: cross-border detention

In *The Health Service Executive of Ireland v A Hospital Provider* [2023] EWCOP 55, the Vice-President, Theis J, rejected the proposition that there might be cases involving deprivation of liberty under cover of a foreign order put forward for recognition and enforcement which could be determined on the papers. The submission was made that the procedure could apply where:

> *(i) All parties, including the person who is the subject of the order, consent to the application;*
> *(ii) The person who is the subject of the order is already present in this jurisdiction and an order authorising the care arrangements for them has already been recognised and enforced by this Court; and*
> *(iii) The new order for which recognition and enforcement is sought involves no substantive change to the care arrangements for the person subject to the order, and merely extends the authorisation of those care arrangements under the inherent jurisdiction.*

However, Theis J continued:

> *23.* […] *as Mr Setright realistically recognises in his written submissions on this issue, there may be real limitations in such clear demarcation lines being drawn. It may be there are not extant and unequivocal written consents to the application, in which case an oral hearing will be required. Also, in circumstances where there is a time lapse between the order to be replaced and the fresh order this Court will still need to be satisfied that the relevant core criteria under Schedule 3 are established at the date of the making of the new Irish order, by reference to the supporting material, as well as considering whether any matters of*

public policy arise. Whilst a skeleton argument, cross referencing the supporting material to the core criteria may help, it may in reality reduce delay if this was undertaken at an oral hearing, even if a relatively short one.

24. Finally, Mr Setright sets out, the inherent urgency of these cases often means they come before the court within 48 hours of the sealed Irish order becoming available. The transcript of the judgment sometimes comes later and the consents even later. In this case, the final order of the Irish High Court was provided on 16 October 2023 and this hearing took place two days later on 18 October 2023. This had consequent delays in the preparation of the bundle, which was not available until 11am the day before the hearing.

25. Now having had the opportunity to consider the further written submissions from Mr Setright, I do not consider there should be any change in the arrangements for considering these applications. In accordance with paragraph 17 of Practice Direction 23A the presumption is that these applications will be determined at an oral hearing if they involve authorising deprivation of liberty. There should always be a skeleton argument filed in support, that takes the court through the relevant criteria and directs the court to how the criteria are satisfied by the supporting material lodged. There remains the option for this Court to consider whether a hearing is necessary but due to the urgency with which these applications have to be dealt with and the inherent lateness of all the supporting material being available there are only likely to be limited circumstances when such a course is appropriate, even when, at the very least, the requirements outlined in paragraph 22 above are met. I agree with the observations made by Mostyn J in Re SV that due to the seriousness of the consequences of the reciprocal order being sought, as well as the international aspects, such orders should only be made by a Court of Protection Tier 3 judge following an attended hearing in court, unless the Tier 3 judge otherwise directs.

Theis J also set out observations as to the material that should be filed in support of a Schedule 3 application, and agreed that there should be a core bundle filed which contains the relevant documents in support of the application.

27. The core bundle should contain the following: (i) the application; (ii) the skeleton argument; (iii) the draft order; (iv) the consents (if applicable); (v) the order of the Irish High Court; (vi) the transcript of the judgment and, in cases where this is necessary, the transcript of the hearing. This is to cover situations, such as here, where the ex-tempore judgment refers to exchanges during the hearing. Where the transcript is lengthy relevant passages should be marked up and linked to the skeleton argument.

28. In addition to the core bundle, there should be a separate bundle which includes the other relevant material from the proceedings in Ireland, so they can be referred to if required.

29. It is hoped this structure will enable these applications to be determined with minimum delay and enable this Court to ensure that is it satisfied that the criteria under Schedule 3 MCA are met, including consideration of matters of public policy, and recognising the inherent seriousness of the relief sought, namely the making of summary orders for detention and treatment, albeit the original order is made in another jurisdiction.

Fees consultation

The MOJ are consulting on increases to court fees, including those contained in the Court of Protection Fees Order (SI 2007 / 1745). The proposals would be to increase an application fee by £37 to £408; to increase the appeal fee by £23 to £257; and to increase the hearing fee by £49 to £543. The Civil Proceedings Fees Order (SI 2008/1053) would also be amended in material part to increase the fee on the filing of a request for detailed assessment of Court of Protection costs by £9 to £96; to increase the to appeal against a Court of Protection costs assessment decision by £7 to £77; and to increase the fee payable when making a request to set aside a default Court of Protection costs certificate by £7 to £72. The consultation runs until 22 December 2023.

Short note: manipulative litigation tactics in the medical treatment context

We reproduce without editorial comment – save to note that they apply equally in the Court of Protection – the observations of the Court of Appeal at the conclusion of the Indi Gregory case:

> *Before leaving this matter, I would add the following. Although this is a legal decision, it is taken with a full awareness of the deeply sensitive question that lies at the heart of the proceedings. Indi's Guardian, who firmly opposes this application because of the continuing distress to Indi caused by the delays, rightly acknowledges that her parents love her fiercely and that it is impossible for us to fully comprehend their current circumstances. Nevertheless, I wish to express my profound concern about the approach that has developed in this litigation. The judge has throughout approached the assessment of Indi's welfare in a fair and sensible way and has reached decisions, of which the latest is but one, that were based on strong evidence that had been carefully tested. In the 25 days since his decision of October, a period during which good arrangements could have been made for Indi's benefit, there have been no fewer than six court hearings, each of them requiring very significant preparation and distraction of attention from Indi herself. As Ms Sutton says, a fair hearing has to be fair to everyone, and I would add, most of all to Indi. The increasing demands and changing positions of the parents have been extremely challenging for the clinicians, who have not only to look after Indi but twelve other critically ill children on the ward. The highest professional standards are rightly expected of lawyers practising in this extremely sensitive area. The court will not tolerate manipulative litigation tactics designed to frustrate orders that have been made after anxious consideration in the interests of children, interests that are always central to these grave decisions.*

Editors and Contributors

Alex Ruck Keene KC (Hon): alex.ruckkeene@39essex.com
Alex 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 Visiting Professor at King's College London, and created the website www.mentalcapacitylawandpolicy.org.uk. To view full CV click here.

Victoria Butler-Cole KC: 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. She is Vice-Chair of the Court of Protection Bar Association and a member of the Nuffield Council on Bioethics. To view full CV click here.

Neil Allen: neil.allen@39essex.com
Neil has particular interests in ECHR/CRPD human rights, mental health and incapacity law and mainly practises in the Court of Protection and Upper Tribunal. Also a Senior Lecturer at Manchester University and Clinical Lead of its Legal Advice Centre, he teaches students in these fields, and trains health, social care and legal professionals. When time permits, Neil publishes in academic books and journals and created the website www.lpslaw.co.uk. To view full CV click here.

Arianna Kelly: Arianna.kelly@39essex.com
Arianna practices in mental capacity, community care, mental health law and inquests. Arianna acts in a range of Court of Protection matters including welfare, property and affairs, serious medical treatment and in inherent jurisdiction matters. Arianna works extensively in the field of community care. She is a contributor to Court of Protection Practice (LexisNexis). To view a 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 5th edition of the *Assessment of Mental Capacity: A Practical Guide for Doctors and Lawyers* (BMA/Law Society 2022). To view full CV click here.

Katie Scott: katie.scott@39essex.com

Katie advises and represents clients in all things health related, from personal injury and clinical negligence, to community care, mental health and healthcare regulation. The main focus of her practice however is in the Court of Protection where she has a particular interest in the health and welfare of incapacitated adults. She is also a qualified mediator, mediating legal and community disputes. To view full CV click here.

Nyasha Weinberg: Nyasha.Weinberg@39essex.com

Nyasha has a practice across public and private law, has appeared in the Court of Protection and has a particular interest in health and human rights issues. To view a full CV, click here

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: adrian@adward.co.uk

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.

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. 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.

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.

Adrian will be speaking at the World Congress of Adult Support and Care. This event will be held at the Faculty of Law of the University of Buenos Aires from August 27-30, 2024. 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 edition will be out in February. 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.

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

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

Chambers UK Bar
Court of Protection: Health & Welfare
Leading Set

The Legal 500 UK
Court of Protection and Community Care
Top Tier Set

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