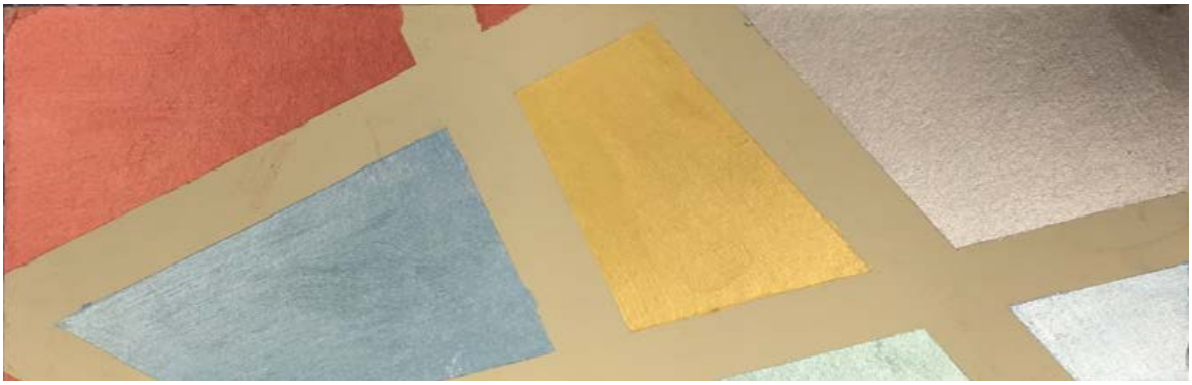
MENTAL CAPACITY REPORT: PRACTICE AND PROCEDURE

May 2024 | Issue 140



Welcome to the May 2024 Mental Capacity Report. Highlights this month include:

(1) In the Health, Welfare and Deprivation of Liberty Report: a rare successful capacity appeal, evicting someone from P's house and holistically approaching hoarding;

(2) In the Practice and Procedure Report: when you can remove deputies, and publishing judgments in serious medical treatment and closed material procedure cases;

(3) In the Mental Health Matters Report: when not to rely on capacity in the mental health context;

(4) In the Wider Context Report: capacity, autonomy and the limits of the obligation to secure life, and the European Court of Human Right raises the stakes for psychiatric admission for those with learning disabilities;

(5) In the Scotland Report: licence conditions and deprivation of liberty, and Executor qua attorney – a few steps back?

In the absence of relevant major developments, and on the basis people have enough to do without reading reports for the sake of reports, we do not have a property and affairs report this month. But some might find of interest the blog by Alex prompted by a question in the property and affairs context of whether you need to have capacity to consent to having your capacity assessed.

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.

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

Welfare deputies: discharge and placing limits on their powers

CL v Swansea Bay University Health Board & Ors [2024] EWCOP 22 (Theis J)

Deputies – welfare matters

Summary

This judgment concerned an appeal to a decision of a circuit judge to discharge CL's mother as her personal welfare deputy. The first instance decision of HHJ Porter-Bryant, dated 6 December 2023 (*Swansea Bay University Health Board v P & Ors* [2023] EWCOP 67) has only recently been published. We set out details of that judgment as the context for the appeal to Theis J.

The matter related to LL, who was 22 years with a number of diagnoses including significant learning disability, atypical autism, attention deficit hyperactivity disorder, hypermobility/low muscle tone, bowel problems, neuralgia and hydrocephalus with 2.5 shunts in place for 5 arachnoid cysts in the brain. He was assessed as requiring 2:1 care. CL was LL's mother and was appointed as his personal welfare deputy in 2019. At paragraph 8, the judgment sets out that "[t]*he deputyship order identified that CL may make decisions on LL's behalf in relation to:*

a. *where he should live;*

b. *with whom he should live;*

c. *decisions on day-to-day care, including diet and dress;*

d. *consenting to routine medical or dental examination and treatment on his behalf;*

e. *making arrangements for the provision of care services;*

f. *whether he should take part in particular leisure or social activities; and*

g. *complaints about his care or treatment.*

The order also specified the restrictions in s.20(2), (5), and (7) MCA, making clear at paragraph 9 that CL did not have the authority to:

(i) to prohibit any person from having contact with him;

(ii) to direct a person responsible for his health care to allow a different person to take over that responsibility; …

(v) to refuse consent to the carrying out or continuation of life sustaining treatment in relation to him; and

(vi) to do an act that is intended to restrain him otherwise than in accordance with the conditions specified in the Act.

LL appears to have been eligible for NHS Continuing Healthcare, as the Health Board was responsible for funding his care and support. LL had lived with CL until July 2021, but the judgment records how difficulties were encountered in finding a care agency to provide this support. LL was moved to a care home and an application was made in July 2021 to the Court of Protection to authorise the move. The care home was intended as a temporary placement, although no other placement had been found and the proceedings were therefore continuing.

The Health Board made an application to revoke the deputyship order in October 20222. The application was founded on a range of allegations about CL's behaviour, including, inappropriately managing his finances and claiming benefits on his behalf, taking and posting inappropriate photos online, 'continually' challenging professionals involved with LL's care, intimidating and threatening staff, obstructing the delivery of care, making excessive and unjustified complaints, among other allegations.

The court process was protracted by repeated directions made about whether the matter would be subject to a fact-finding hearing in respect of LL's residence, which was ultimately not warranted. In October 2023, the court concluded that it would consider the application to revoke the deputyship on the basis of written submissions, without making findings of fact. A fact-finding had been planned on contact issues, but was ultimately not required after the parties agreed a protocol contact.

CL resisted the revocation of the deputyship application, but argued that *"if the court was minded to grant it consideration should be given to varying the deputyship order so certain elements were retained, in particular the authority to consent to routine medical or dental examination and treatment on behalf of LL"* (paragraph 18)

First instance judgment

Much of the argument in the case related to the provisions of ss.16(7)-(8) MCA, which state:

> *(7)An order of the court may be varied or discharged by a subsequent order.*
>
> *(8)The court may, in particular, revoke the appointment of a deputy or vary the powers conferred on him if it is satisfied that the deputy—*
>
> > *(a)has behaved, or is behaving, in a way that contravenes the authority conferred on him by the court or is not in P's best interests, or*
> >
> > *(b)proposes to behave in a way that would contravene that authority or would not be in P's best interests.*

In the first instance judgment, HHJ Porter-Bryant proceeded on the basis that the deputyship could be discharged under s.16(7) MCA. HHJ Porter-Brywant was not persuaded by CL's submissions that there was a distinction between making an 'appointment' of a deputy under s.16 MCA and making an 'order' under s.16 MCA, *"and if there is a distinction, it is a "distinction without a difference"* (paragraph 31). He concluded *"that the question for the court is whether it is in P's best interests for the deputyship to continue, either in its current form or in an alternative form."*

HHJ Porter-Bryant concluded that it was not in LL's best interests for the deputyship to continue, and it should be discharged in its entirety; this decision was made despite the court not having

made findings on the allegations made against CL. The first-instance judgment concluded that:

> *74.* […] *it is appropriate to discharge the deputyship in its entirety. Many of the decisions in respect of which authority is provided under the deputyship are now matters that are firmly before the Court of Protection or are otherwise matters in respect of which C is no longer the decision-maker, in particular residence, with whom P should live, the day-to-day diet and dress, leisure and social activities, provision of care, services and future care. To retain a deputyship in respect of those matters would be disproportionate and unnecessary and would represent an unjustifiable intrusion into P's life and decision-making. Such an order would be contrary to the principles of section 16(4) and the guidance thereto and the principles echoed through the case law.*
>
> *75. Likewise in respect of medical treatment, the circumstances are now such that the current deputyship seems to me to amount to a request for a deputyship to enable C to continue to be informed. That is provided for by the section 4(7) duty. Indeed, should any party be unaware or mistaken as to the extent of their duty under 4(7), it is now fortified by the protocols that I have proved.*
>
> *76. Further, the current deputyship and proposed variation in those circumstances would, in my judgment, run contrary to the guidance provided by Keehan J in YH v Kent County Council & Ors [2021] EWCOP 43. The relevant paragraph is helpfully set out at paragraph 41 of the Health Board's position statement, where Keehan J said that YH's position in that case was one where, in effect, the applicant seeks the deputyship so that she has a label, a status and so that she would be listened to and consulted. That, in the view of Keehan J, was not an appropriate basis upon which to found an application for deputyship* […]
>
> *81.* […] *best interests requires consideration of all the circumstances, an assessment of matters including the extent to which an order or decision intrudes into P's life. I accept the Health Board's assessment of the actual circumstances surrounding the provision of P's needs in relation to P. The fact that this order is not limited in time is one factor that the court can consider. The order provides for decision making to be vested in C when she is not in a position to make those decisions. That is a factor that the court can weigh. The effect that an order or the continuation of the deputyship would not enhance the collaborative approach required in this case with clinicians and indeed might, at worst, be detrimental to it, are relevant factors to the section 4 assessment.*
>
> *82. In arriving at the conclusion that it is in P's best interests for this deputyship to be discharged, I have had regard, as Mr McKendrick encourages me to do, to the fact there is no analysis of wishes and feelings in this case, with wishes and feelings, of course, being an important factor. But, in my judgment, the submission by the Health Board and the litigation friend is a sound one in this regard: wishes and feelings on a conceptually complex matter such as this deputyship is difficult, if not impossible. One cannot extrapolate from the love that P has for his mother that he would wish for her to be deputy.*
>
> *83.* […] *ultimately I conclude that the deputyship should be discharged since the overwhelming majority of the matters in respect of which C has authority under the deputyship are matters in respect of which she is not the decision maker, and those matters*

> *that remain are such that the role that is proposed by C under the deputyship falls foul of the guidance given in, in particular, YH v Kent by Keehan J and represent an order that is not the least restrictive that the court can make or decision the court can arrive at in this case.'*

The appeal

CL advanced three grounds of appeal, arguing that:

1. the court erred in law by relying on s 16(7) MCA to discharge the deputyship order;
2. the court erred in its approach to the discharge of the deputyship, failing to recognise the difference between granting a deputyship and discharging a validly appointed one;
3. the court failed to carry out a detailed and comprehensive best interests analysis in respect of the evidence available as to the best interests in respect of the discharge of the deputyship order.

In relation to the first ground, CL argued that "*the Judge was wrong to discharge the deputyship order purely as a question of LL's best interests, without the need to apply the s16(8) test*" (paragraph 37). CL's case that the Parliament had made a 'clear distinction' between an 'order' and an 'appointment' under s.16 MCA, and that "*although there might be situations when a deputyship order may be discharged for reasons other than the deputy's conduct, where the application both initially and at the hearing was predicated on CL's conduct this could not be ignored, as Parliament had set out the test for removal in such circumstances and however agile the court is, it must follow the statutory language*" (paragraph 39). It was submitted that there was a "*comprehensive and robust scheme to regulate deputies and protect P*," and specifically that "*the powers conferred on the deputy should be limited in scope and duration as is reasonably practicable (s16(4)(b))*" (paragraph 42). Further, "*this heightened test in s16(4)(b) underscores his submissions that Parliament did not intend the revocation of the appointment to be limited to best interests due to this additional test on appointment, supported by the provisions in s20(6) that a deputy does not have authority to act contrary to P's best interests*" (paragraph 42). CL argued that "*the language in the MCA makes it clear Parliament has made a deliberate distinction between appointment (as a deputy) and orders more generally* […] *that distinction is made in other parts of the MCA, for example in s19 with the repeated references to 'appointment', s58(1) uses the term 'appointed' in respect of deputies and s16 (7) uses the term 'discharge an order' whilst s16(8) uses the different term to 'revoke' an appointment*" (paragraph 45). CL submitted that the test for revocation was not met where "*no breach of the complex duties and statutory scheme applied by the MCA and the Code of Practice were established and the Public Guardian had raised no concerns*" (paragraph 49).

CL argued the second and third grounds together. She argued that "*the best interest evaluation was wrong for two reasons: (i) the Judge conflated the decision to revoke with whether it was in LL's best interests for CL to be his welfare deputy, and (ii) he failed to carry out a detailed evaluation of the s4 factors and did not have proper evidence before him from the Health Board to carry out that evaluation*" (paragraph 50). It was argued that the first-instance judge erred in "*failing to have regard to the detailed statutory framework in the MCA that governed the deputyship, this was particularly so where no breach of these duties had been established*" (paragraph 52), and the court had insufficient evidence to undertake a best interests analysis,

including insufficient evidence on CL's wishes and feelings.

The Health Board resisted the appeal, supported by the litigation friend, for reasons which were accepted by Theis J in its judgment.

Appeal judgment

Theis J granted permission to appeal but dismissed all three grounds of appeal.

On Ground 1, Theis J found that the first-instance judge had analysed the interpretation of ss.16(7)-(8) and given a conclusion at paragraphs 45-60 of the first-instance judgment. Theis J found (on the concession of CL in oral argument) "*that an appointment of a deputy is set out in an order and that an ability to vary the deputyship order was retained in s16(7) but not to discharge that order, as that could only be done under s16(8)*" (paragraph 81(a)). Theis J agreed with the first-instance judge that any distinction between an appointment and an order was a distinction without a difference.

Theis J accepted the Health Board's "*submission that s16(7) should properly be interpreted as a general, broadly-worded power, which empowers the court to vary or discharge any order that it makes pursuant to any of its powers under s.16, whether under 16(2)(a), s.16(2)(b), or s.16(5). As Mr Patel convincingly submits this sensible interpretation of the word "order" encompasses all actions that the court can take under s.16(2), (5) or (6): orders, decisions, appointments, directions, "conferring powers" and "imposing duties". Any of these actions by the court under s16 are made "pursuant to an order" and properly fall within the language in s.16(7) MCA 2005 as being an "order of the court" and so can be "varied or discharged" by a subsequent order (as provided for in the section)*" (paragraph 81(2).

Theis J accepted the submissions of the Health Board that the list set out in s.16(8) was "*on a plain reading* […] *not an exhaustive list*" of reasons why a deputyship may be discharged (paragraph 81(3). Theis J considered that CL had placed an overreliance on the MCA scheme to regulate documents, and the outcome of CL's argument "would result in the court being unable to discharge the deputyship order in the circumstances listed by Mr Patel, when P's best interests demands such an order is made. To accept Mr McKendrick's submissions would wholly undermine the purpose of the MCA. The justification given by Mr McKendrick of any perceived unfairness for the deputy does not stand up to scrutiny in circumstances where the deputy can fully engage and participate in the process that results in any decision" (paragraph 81(4).

In relation to Ground 2, Theis J was satisfied that the first instance judge had recognised the difference between granting and appointing a deputyship, looking to the coverage of this issue in the judgment, and the focus the judge had placed on discharge. Theis J considered that the first-instance court's treatment of this issue had been clear.

In relation to Ground 3, Theis J considered that the best interests analysis had been sufficiently detailed and considered all relevant matters, noting the context "*that this is a discretionary decision reached by the Judge who has been the allocated Judge dealing with this case for some considerable time*" (paragraph 84). Theis J also considered that the judge had considered LL's wishes, "*but rather concluded that in the context of his long standing involvement with the case this was not a matter where LL's wishes and feelings would assist him. A conclusion he was entitled to reach"* (paragraph 86(2))

Comment

The conclusion of the Theis J appears unsurprising: it is difficult to see that s.16(8) imposes any mandatory limitations on s.16(7) and even more difficult to see that there should be any bar to a judge of the Court of Protection discharging the appointment of a deputy where the court feels that appointment is contrary to P's best interests. We would note the court's reliance on the judgment of Keehan J in *YH* that a deputyship must be for purposes greater than the deputy's wish to have an official status or concerns that he or she will not be listened to in best interests decisions.

We would, however, note a point in this case which arose in argument, but did not factor into the decision – the provisions of s.16(4) MCA, which states in relevant part:

> *(4)When deciding whether it is in P's best interests to appoint a deputy, the court must have regard (in addition to the matters mentioned in section 4) to the principles that—…*
>
> *(b)the powers conferred on a deputy should be as limited in scope and duration as is reasonably practicable in the circumstances.*

Welfare deputyships are by some considerable margin the less common form of deputyship, and continue to be relatively rare. However, we would note that typically, when both property and affairs and welfare deputyship orders are made, they are made for indefinite duration. We would query this practice, and suggest that welfare deputyships should not typically be made for an indefinite duration, and should be subject to provision for review.

We understand from information disclosed by the Court of Protection that applications for welfare deputyships are very commonly made when a person lacking capacity is about to or recently has turned 18 (as appears to have happened in this case): the person's family may wish to retain a formal status as decision-makers as parental responsibility comes to an end. The transition from childhood to adulthood may often come along with many other transitions in terms of education, health and social services, and may be a challenging one for the person and their family. The family's deputyship at that time may assist that process to have clear lines of decision-making, and in a great many cases, may be very much supported by the young person (as was the case in *Lawson, Mottram and Hopton* [2019] EWCOP 22).

However, from our experience, we have also seen many cases where the person's views and relationship with their family change as they become older, leave the family home, and develop other interests and relationships. P's wish to have their parent make all decisions for them at 18 may not persist when P is 30 and has lived away from their parents for many years. Further, if the person stops living in the family home, there may be many day-to-day decisions which the welfare deputy is not in a practical decision to make, and conflict may potentially arise between the deputy and those are with P every day and are charged with his or her care.

We would consider that it would be prudent for there to be further consideration of the application of s.16(4)(b) in the appointment of welfare deputies. If an application is being made because P is a young person aging out of children's service, an appointment of 4-5 years with provision for review may be a 'reasonably practical' limitation on duration. This would not serve as a renewal of the deputyship if it were still required, but would recognise that P's circumstances may well have changed after the transition to adulthood. It would also recognise that P themselves may find it very difficult to express a wish for a parent to relinquish deputyship, or to practically make such an

application; a review would ensure that P had some regular opportunities to put forward their own wishes and feelings about whether a person should hold such significant control over their life.

Short note: Serious medical treatment – the importance of the public record

In 2014, a (relatively) very long time ago, Sir James Munby, then President of the Court of Protection, issued guidance on the publication of judgments. This set a presumption, absent "compelling reasons," for publication of judgments relating to a range of matters, either where the judgment already exists, or the judge has ordered that the judgment be transcribed. The guidance applied to all judgments in the Court of Protection delivered by the Senior Judge, nominated Circuit Judges and High Court Judges (in other words, not to judgments delivered by District Judges, who hear the majority of cases – to understand more about this, see here).

The cases Sir James had in mind were judgments arising from:

> *(i) any application for an order involving the giving or withholding of serious medical treatment and any other hearing held in public;*
> *(ii) any application for a declaration or order involving a deprivation or possible deprivation of liberty;*
> *(iii) any case where there is a dispute as to who should act as an attorney or a deputy;*
> *(iv) any case where the issues include whether a person should be restrained from acting as an attorney or a deputy or that an appointment should be revoked or his or her powers should be reduced;*
> *(v) any application for an order that an incapacitated adult (P) be moved into or out of a residential establishment or other institution;*
> *(vi) any case where the sale of P's home is in issue;*
> *(vii) any case where a property and affairs application relates to assets (including P's home) of £1 million or more or to damages awarded by a court sitting in public;*
> *(viii) any application for a declaration as to capacity to marry or to consent to sexual relations;*
> *(ix) any application for an order involving a restraint on publication of information relating to the proceedings.*

The guidance has never formally be withdrawn, nor can it properly be said to be honoured in all cases. This makes the judgment of Henke J in *King's College Hospital NHS Foundation Trust v South London and Maudsley NHS Foundation Trust & Anor* [2024] EWCOP 20 refreshing. It is a 'routine' serious medical treatment case, of huge importance to the person concerned (and also to those delivering medical treatment to him), but of no wider importance in terms of the development of the law. However, Henke J nonetheless explained why a judgment nonetheless appears:

> *20. Whilst this matter has ultimately been agreed, I have considered it important to publish this short judgment for two reasons. Firstly, this case has been heard in public subject to a transparency/reporting restrictions order. I consider that where, as here, a case has been listed for a final hearing in public, if it is reasonably practicable, a short judgment should be published so that the public may know, if they wish, what has happened and why it has happened. Secondly, GF should have a record which he can access at his will which sets out why he has had his leg amputated and the steps that were taken to make sure that that amputation was in his best interests. GF did not*

> *want to see me as part of the hearing. However, I am conscious that his views on the operation have been sought by the Official Solicitor and those treating him. I have recorded a summary of those views in this judgment, and I have factored those views into my decision making. He should know that and the outcome of this hearing, which after all is about him.*

Short note: closed material and parallel proceedings

As an interesting counterpoint to the publication of the serious medical treatment decision noted immediately above, Henke J has also loyally followed the *Closed Hearings and Closed Material Guidance* ([2023] EWCOP 6) and produced a judgment "to enable disclosure at an appropriate point in the future and to enable the speedy and proportionate determination of any appeal if this decision is appealed by any party. The story disclosed in *P (Application to Withhold Closed Material: Concurrent Civil Proceedings)* [2024] EWCOP 26 is a sad and difficult one involving a young man who suffered serious injuries (including a brain injury), and whose parents were – on the evidence before the court – both not able to act in his interests in the resulting civil litigation, and also profoundly distrustful of the entirely judicial process.

Indeed, the application before Henke J arose out of failed attempts by the solicitors instructed by the Official Solicitor to engage with P to progress the civil claim on his behalf. In the course of those attempts, the Official Solicitor had become sufficiently concerned by the actions of his parents that, having failed to persuade the local authority to take steps, she brought an application on his behalf in the Court of Protection for declarations and decisions about P's welfare, including contact.

In the course of that separate application, Henke J was asked to withhold material from his parents for a time-limited period and for a specific purpose, namely for P's capacity to be assessed. For the reasons set out with admirable clarity in the judgment, Henke J acceded to the application, although with one important amendment, noting at paragraph 89:

> *Throughout this part of the judgment dealing with closed material, I have written at this stage. Any interference with the rights of any party must be lawful, necessary, and proportionate. This court has a duty to keep the issue of disclosure under review and to only make an order for such duration as is necessary and proportionate on the facts of this case. On the facts as presently before this court, I cannot see any justification for withholding the material from P's parents once the court assessment proposed by the Official Solicitor has been served on P's parents. The duration of the order will thus be until the assessment has been served on P's parents or further order of the court, whichever is the sooner.*

The judgment is also of note because it also featured an application by P's parents to discharge all the previous orders made in the Corut of Protection, on the basis that the personal injury proceedings should be the only proceedings before any court in relation to P. Henke J refused this application, noting at paragraph 78 that:

> *On behalf of the Official Solicitor, it is accepted that there are several issues which will require co-ordination between this Court and the King's Bench Division including the management of any monies P may receive. Further, this Court may, in due course, be required to authorise any care arrangements put in place as a result of the civil proceedings, such as any arrangements depriving P*

> *of his liberty. This overlap between the two sets of proceedings is perhaps inevitable given the welfare concerns in relation to P were raised in the personal injury proceedings. However, there are significant and relevant differences between the two proceedings. The personal injury proceedings are about compensation for injuries received. The Court of Protection proceedings were initiated because of safeguarding concerns about P and concerns about his capacity to decide (amongst other matters) where he should live, who he should have contact with, and issues about his care and treatment. Those will be best interest decisions will be matters for this court.*
>
> *79. Based on the papers currently before me, I agree with the Official Solicitor that as this case proceeds, there may be legitimate disputes to be determined in this court about where P should reside to receive the care he requires and potentially issues about whom he should have contact with. Accordingly, I do not agree with P 's parents' argument that these proceedings should be dismissed, and all previous orders should be discharged. This court has jurisdiction. The proceedings before this court are necessary and have a purpose which cannot be fulfilled by the personal injury proceedings alone. The King's Bench Division will determine the level of P's compensation and his needs in that context. This court will consider his best interests when making any welfare orders that may be required in the future.*

Fees increase in the Court of Protection

With effect from 1 May 2024, the fee for making an application in the Court of Protection rose from £371 to £408, and the appeal fee from £234 to £257.

The Court and Tribunal Fees (Miscellaneous Amendments) Order 2024 also corrects some errors, including in the Court of Protection Fees Order 2007. As the Explanatory Memorandum notes:

> *Paragraph 14(3)(b) in Schedule 2 to the Court of Protection Fees Order 2007 deals with the calculation of a party's disposable capital and gross monthly income for the purposes of calculating entitlement to fee remissions. Mistakenly, paragraph 14(3)(b) fails to specify that the gross monthly income of 'P' (the protected party) is to be treated as the gross monthly income of the party, in proceedings brought concerning the property and affairs of a P. This amendment will correct this oversight.*

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 following open events:

1. Adults with Incapacity at the Horizon Hotel, Ayr on 22 May 2024, organised by Ayr Faculty (contact Claire Currie claire@1stlegal.co.uk)
2. Adults with Incapacity Conference in Glasgow on 10 June 2024, organised by Legal Services Agency (contact SusanBell@lsa.org.uk)
3. The World Congress on Adult Support and Care in Buenos Aires (August 27-30, 2024, details here)
4. The European Law Institute Annual Conference in Dublin (10 October, details 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 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.

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