

Prior to the Mental Capacity Act 2005 few lawyers took an interest in the welfare of people whose mental capacity was impaired by mental health issues, learning disability or acquired brain injury. When I spoke at the initial Jordans seminars on this legislation attendances were small and largely restricted to those already working in the field. That has changed, and in 2011 the seminars were oversubscribed with over 200 delegates at London and more than 100 attending a regional seminar in Manchester. Practising barristers and solicitors, care and health professionals, and academics were all anxious to enhance their knowledge despite the fact that so few of them contemplated appearing before the Court. This is undoubtedly a growth area but not without its problems.

The main development in this 2012 volume is the inclusion of comprehensive case summaries carved out of the *Court of Protection Law Reports* now published by Jordans. I started to introduce summaries in the 2010 edition simply because they were not readily available but the Court of Protection now merits its own area within the law reports and Alex Ruck Keene (supported by his chambers team) has taken over the task. In addition to general updating the range of *Precedent Orders* has been expanded and material included about the role of the *Court Funds Office*. Another potential growth area is the re-emergence of the inherent jurisdiction of the High Court in perceived areas of lack of capacity not within the scope of the Court of Protection. A new chapter deals with this and the cross-over with Administrative law (which will become more important as public authorities decline to put options on the table).

The new *Part X: International Protection of Adults* has developed into an important feature of this volume. Claire van Overdijk has joined Adrian Ward and Richard Frimston as our team of contributors who together draw on extensive contacts in other jurisdictions to produce a unique overview of comparative mental capacity law and procedure together with the relevant private international law in each of those jurisdictions. This has the potential to outgrow a volume dedicated to our own Court of Protection and points the way to a new area of legal scholarship. It is a privilege to retain this team as contributors to this volume.

The *Deprivation of Liberty Safeguards* (DoLS) continue to dominate those High Court Judges who sit in the Court of Protection but I view this as a distraction that the Court could well do without. The safeguards are an administrative nightmare that are needed to prevent the unjustified detention of some adults in breach of their human rights but have little to offer those who clearly need supervision for their own safety. The emphasis for them should be on quality care which enhances their human rights but the Court of Protection appears impotent to address inadequate provision. The search for 'best interests' becomes restricted to that which is available and there is little that can be done if the only care package on offer does not seem satisfactory.

My own retirement approaches after 50 years with the law as my taskmaster. As a district judge I have enjoyed working at the coal face where justice is delivered to ordinary people in often extra-ordinary situations. I constantly remind myself that it is the strongest case that should succeed and not the strongest litigant. Our son's impaired life and premature death within the 'Bournewood Gap' motivated me to address the needs of people whose vulnerabilities were routinely overlooked by lawyers and within the justice system. Not only those with apparent physical and mental impairments for whom the need for

some compassion or adjustment was obvious, but also those with communication difficulties, educational deficits and social deprivation. There have been great advances since I wrote *Mental Handicap and the Law* some 20 years ago. We now have a policy of community care, discrimination legislation which includes disability, a Human Rights Act and, of course, the Mental Capacity Act 2005. It has all become fertile ground for lawyers, but without government commitment and adequate funding the dream does not become a reality. In the present financial climate the caring new world appears to be receding and with less support there is a greater need for protection.

Contrary to the view of many lawyers the Mental Capacity Act 2005 is not just a Court of Protection issue but permeates all fields of law and practice. The core group of lawyers who pressed for this legislation 25 years ago has grown exponentially and it is reassuring to see the commitment of so many young lawyers. There are welcome developments such as the growth of organizations such as *Solicitors for the Elderly* which focus on client groups rather than traditional fields of law. The emphasis in training judges is now on judicial skills and diversity rather than law and procedure. I would like to see more training of this nature at our law schools to help develop a new legal culture that takes into account the needs and vulnerabilities of individuals who are full members of our society and encounter its legal system.

I wish to thank all the contributors for their dedication and also James Beck from the *Office of the Official Solicitor* for continuing to support this work, and Joan Goulbourn from the *Office of the Public Guardian* for her oversight of relevant material.

We have endeavoured to state the law as at 1 February 2012. Constructive comment on the development of this volume would be welcome and should be sent to the publishers.

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