

ARIANNA KELLY

Year of call: 2013

Clerked by: Mark Ronson Luke Heywood

AREAS OF EXPERTISE:

Court of Protection: Health & Welfare Court of Protection: Property & Affairs Health & Social Care Judicial Review Inquests



Court of Protection: Property & Affairs

Arianna acts and advises in all areas of property and affairs work, acting regularly for the Office of the Public Guardian, deputies and private individuals. Arianna is particularly experienced in issues of financial abuse, contested issues relating to capacity, the removal of holders of lasting powers of attorney and statutory wills applications. Arianna regularly advises deputies on applications to the Court of Protection relating to the recovery of funds on behalf of people lacking capacity, including on complex questions of best interests in relation to pursuing recovery from family members.

Arianna is ranked in Chambers & Partners UK 2018 and 2019 as an 'Up & Coming' Junior in Court of Protection: Health & Welfare: All Circuits; the guide notes that 'She is also well regarded for her handling of property and affairs matters.' Arianna is a member of the National Committee for the Court of Protection Practitioners Association.

Arianna is an experienced Court of Protection Health and Welfare and Community care barrister, and is adept at issues relating to the intersection between property and affairs and adult social care charging, and property and affairs and welfare issues. Arianna is available to support applications to the Court of Protection by deputies arising out of personal injury awards relating to issues of both property and affairs and health and welfare.

Arianna has considerable experience on issues relating to adult social care charging, including on matters relating to double recovery for people with personal injury awards, deprivations of assets, and direct payments. Arianna also regularly advises on applications for public funding from local authorities and NHS Continuing Healthcare eligibility. Arianna also regularly acts in applications for community care debt recovery for local authorities and private individuals. Arianna has authored a book chapter on charging in adult social care (Community Care Law and Local Authority Handbook (Third Edition, 2015): Chapter 6 - Finance and Charging) and trained on the issue.

Some of Arianna's recent property and affairs work includes:

- Removal of an LPA: Arianna acted on behalf of the Office of the Public Guardian (OPG) in an application to remove holders of a lasting power of attorney and appoint a panel deputy, on the basis of the donor's making substantial transfers of assets while the donor had capacity. The OPG argued that these transfers had been obtained by undue influence; the case involved complex issues relating to the interaction of a lasting power of attorney and ordinary power of attorney. The application was granted following a contested hearing.
- Access to P: Arianna acted on behalf of a property and affairs deputy to secure access to a vulnerable person. Arianna supported the deputy in making an emergency application to the Court of Protection to ensure the deputy had access to P in order to discharge her duties.
- Recovery of assets: Arianna advised a deputy on what steps could be taken to restore P's estate following the removal of her former attorneys; the advice was written both to advise the deputy and support an application to the Court of Protection for permission to bring litigation. The attorney had pleaded guilty of theft in relation to P's assets and repaid some of the amount taken, but a far lesser amount than had been identified by the deputy as having been lost. Arianna provided analysis of the risks and benefits of different claims which could be brought to recover the outstanding amounts.
- Double recovery: Arianna provided detailed advice in proposed judicial review proceedings relating to eligibility for local authority funding where P had significant periodical payments. The matter considered questions of eligibility relating to both the relevant disregards for different sources of funds arising out of a personal injury award, and the assessment of P's eligibility for public funding on the basis of his needs for care and support.
- Personal injury awards: Arianna acted on behalf of a person who had a property and affairs deputy appointed following a brain injury, but had regained capacity and sought the discharge of his deputy. She advised on complex issues relating to the transfer of assets held by a deputy into a personal injury trust. The case involved consideration of how the transfer could be structured, including on implications for social care charging and benefits.
- Safeguarding: Arianna acted on behalf of a local authority in an application by a family member of P to remove his court-appointed professional deputy and appoint the family member as deputy. The case involved allegations of serious misconduct between the family and deputy. Case involved consideration of overlap between property and affairs issues and local authority safeguarding.
- Scope of authority: Arianna advised a local authority on what steps can be taken to authorise signed agreements for tenancies or licenses without an application to the Court of Protection, so that relevant benefits can be obtained.

Profile

Arianna has a specialist practice in mental capacity, community care and mental health law and inquests. Chambers and Partners describes her as a 'Talented public law junior, regularly appearing in the Court of Protection in cases concerning mental health, residence and welfare. She is also well regarded for her handling of property and affairs matters...' 'She's extremely thorough in her approach and has great attention to detail. She's totally on top of the facts and is a very good advocate.' 'An excellent cross-examiner.'

Arianna acts in a range of Court of Protection matters including welfare, property and affairs, serious medical treatment. Arianna also regularly acts and advises in matters relating to the inherent jurisdiction of the High Court.

Arianna is on both the Attorney General's Regional Panel and the Equality and Human Rights Commission Panel of counsel. Arianna is a member of the National Committee for the Court of Protection Practitioners Association.

Arianna works extensively in the field of community care. She frequently advises in and undertakes judicial review work in relation to eligibility and care planning decisions, community care charging and debt recovery, safeguarding investigations and decisions to de-register approved providers, age assessments and allowances to special guardians. She also advises public authorities on policies relating to health and social care.

Arianna qualified as an attorney in the United States, graduating from Harvard Law School in 2008 and practiced the Massachusetts bar between 2008 and 2012; she has worked in public policy in both the United States and the United Kingdom.

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Areas of Expertise

Court of Protection: Health & Welfare

Court of Protection: Property & Affairs

Health & Social Care

Inquests

Judicial Review

Appointments

Attorney General's Regional C Panel of Counsel

Equality and Human Rights Commission Panel of Counsel

Memberships

Court of Protection Practitioners' Association, National Committee Member

Member of the Honourable Society of the Inner Temple, 2013

Member of the Northern Circuit, 2014

Publications

- Judicial Review: Law & Practice, Patterson & Karim (Third Edition, 2019): Chapter 6 - Community Care
- Community Care Law and Local Authority Handbook (Third Edition, 2015): Chapter 6 - Finance and Charging
- LexisNexis: Articles: *Entitlement to remain at home; Alternative care and funding; Care homes—placement options and fees; Ordinary residence*
- Westlaw Insight: Articles: Local government functions (promotion of well-being); Social care: duty to promote well-being (Wales)
- Arianna also regularly writes for the Sweet & Maxwell Local Government Encyclopaedia and Local Government Lawyer on issues of community care, mental capacity and mental health;
- Arianna has written for Jordan's Public Law Online in the areas of community care, healthcare, education and immigration.

Qualifications

Harvard College, A.B., Government, cum laude 2005

Harvard Law School, J.D., cum laude 2008

London School of Economics, LLM, with distinction 2013

Admitted to the Massachusetts Bar, 2008

Recommendations

"She's extremely thorough in her approach and has great attention to detail. She's totally on top of the facts and is a very good advocate." "An excellent cross-examiner." - Chambers & Partners UK 2020

"Talented public law junior, regularly appearing in the Court of Protection in cases concerning mental health, residence and welfare. She is also well regarded for her handling of property and affairs matters" - Chambers & Partners UK 2018

"She has an incredible knowledge of the academics of the law, excellent drafting skills, and she can convey very complex points in a simple and easy to understand way." - Chambers & Partners UK 2018

"Arianna has an impressive and wide knowledge of the law applicable to Court of Protection matters, including an in-depth knowledge of mental health and community care law." - Chambers & Partners UK 2018



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