

DEBRIEF: A Kings Chambers Podcast Factsheet

Episode 16: Double Recovery with Kate Georgiev

Kate Georgiev was a successful primary school class teacher, delivering lessons across the curriculum and gaining valuable skills in communication, behaviour management and report writing. She left this profession after her son was born ten years ago with severe cerebral palsy. Since then, Kate has gained extensive experience of negotiating the statutory care system in order to ensure that her son receives all appropriate care packages and equipment provision. Kate has also assisted other families to successfully improve their access to services. Kate served as her son's litigation friend whilst his medical negligence claim was proceeding and has since been appointed his property and financial affairs deputy. As a result, Kate has a good knowledge of the care system and legal processes impacting those who have experienced a catastrophic injury.

Kate is an elected parent governor on the board of her son's special needs school, giving her valuable insight into the running of a specialist provision. Kate also has two other children and volunteers in their schools every week, working with small groups of children to positively impact on their learning. Kate also writes a personal blog about the realities of life with a severely disabled child and is attending an advanced level Spanish course.

Gerard McDermott QC is one of the most sought-after personal injury silks in the country. Gerard was called to the Bar in 1978 and appointed as Queen's Counsel in 1999. He was appointed as a Deputy High Court Judge in 2008 and has a long time involvement at the heart of the American Bar Association. He is a former leader of the European Circuit and many of his cases have an international dimension. Together with conducting employment and some commercial cases Gerard also focuses on the most serious personal injury and clinical negligence work. He was described in the latest Chambers UK Guide to the Bar as "the epitome of an excellent barrister: he's a good advocate, good on paper, excellent with clients and very accessible."

He is active in training junior barristers and he is active on social media, being described very recently by another QC as the "Twitter Head of Chambers"

Gerard is a member of Kings Chambers and Outer Temple Chambers.

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Simon Burrows is a leading practitioner in mental health and Court of Protection work. Involved in many significant cases in the development of the MCA and the MHA, as well as public law challenges to compulsory detention under both Acts. He advises public authorities on important and sensitive cases, and also represents individual patients or their families in challenges to detention. He has sat as a judge in mental health cases since 2003. He writes and lectures widely on the subjects, and trains tribunal judges and other members on the interface between the MCA and MHA for the Judicial College.

Arianna Kelly is a specialist Court of Protection and Public Law barrister who regularly advises and acts in public law matters relating to of social care and healthcare, as well as issues relating the welfare and property and affairs of people lacking capacity. She frequently advises in and undertakes judicial review work in relation to eligibility and care planning decisions and community care charging and debt recovery. She also advises public authorities on policies relating to health and social care. She is a member of the Attorney General and the Equality and Human Rights Commission panels of counsel.

Materials

[The Court of Protection](#)

Cases referenced:

Personal injury cases relating to double recovery:

[Peters v East Midlands Strategic Health Authority & Nottingham City Council](#) [2009] EWCA Civ 145

[Crofton v National Health Service Litigation Authority](#) [2007] EWCA Civ 71

[Tinsley v Sarkar](#) [2005] EWHC 192 (QB)

Public law case relating to double recovery:

[Tinsley v Manchester City Council & South Manchester CCG](#) [2017] EWCA Civ 1704:

I do not consider it to be immoral or low principled to claim a benefit to which Parliament had made clear Mr Tinsley is entitled. This is especially the case if Parliament has already made clear that funds administered by the Court of Protection are to be specifically disregarded in respect of claimants who are entitled to make claims pursuant to Acts other than the 1983 Act. The same considerations apply to the somewhat unfocused case of estoppel, espoused in the submissions of the Local Government Association. There is, moreover, no suggestion that Mr Tinsley did not genuinely believe, at the time his case was before Leveson J, that he would access private care rather than state care.

Unless therefore there is some specific inhibition on deputies appointed by the Court of Protection arising from the risk of double recovery, there is no reason why Mr Tinsley should not now claim the benefit to which he may be entitled under s.117 of the 1983 Act.

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*It is, of course, the case that courts will seek to avoid double recovery by a claimant at the time they assess damages against a negligent tortfeasor. If therefore it is clear at trial that a claimant will seek to rely on a local authority's provision of after-care services, he will not be able to recover the cost of providing such after-care services from the tortfeasor. Crofton is itself authority for that proposition. **It does not follow from this that, if a claimant is awarded damages for his after-care he is thereafter precluded from making application to the local authority.***

NHS Continuing Healthcare:

- [R. v. North and East Devon Health Authority, ex parte Coughlan \[1999\] EWCA 1871](#)
- [\(R\) Grogan v Bexley NHS Care Trust & South East London Strategic Health Authority & Secretary of State for Health \[2006\] EWHC 44 \(Admin\) \(QB\)](#)

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