

DEBRIEF: A Kings Chambers Podcast Factsheet

EPISODE 6 – Damages for Unlawful Detention in a Clinical Negligence Claim

Nigel Poole QC, Sam Karim QC and Francesca P. Gardner discuss the recent fascinating case of [Esegbona v King’s College Hospital NHS Foundation Trust \[2019\] EWHC 77 \(QB\)](#). Nigel, Sam and Francesca draw together their expertise in Clinical Negligence, Court of Protection and Deprivation of Liberty to discuss the interesting decision in this case.

The case addresses the failure of a Health Trust to comply with the requirements of the Mental Capacity Act 2005, and in the first decision of its kind, the court awarded damages for unlawful detention in hospital as part of a clinical negligence claim.

The podcast addresses the Judgment in some detail but also addresses the steps that should and could have been taken by the Trust to act in accordance with the requirements of the Mental Capacity Act 2005 and to ensure that any deprivation of Ms Esegbona’s liberty was lawful and compliant with the requirements of Article 5(4) of the ECHR.

Cases referenced in the Podcast

- [Esegbona v King’s College Hospital NHS Foundation Trust \[2019\] EWHC 77 \(QB\)](#)
- [Bostridge v Oxleas NHS Foundation Trust \[2015\] EWCA Civ 79](#)
- [AP v Tameside Metropolitan Borough Council \[2017\] EWHC 65 \(QB\)](#)

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Speaker Profiles



Nigel Poole QC

Nigel is ranked as a leading QC by Chambers UK and the Legal 500. He is Head of Kings Chambers and sits as a Deputy High Court Judge and a chair of the Bar Tribunal and Adjudication Service. He has appeared in the Supreme Court and Court of Appeal. He has given many lectures and seminars around the country on subjects including human rights, loss of earning capacity and proving reduction in life expectancy.



Sam Karim QC

Sam is a leading specialist practitioner in domestic and international public law, Court of Protection and domestic and international arbitration. He has experience in all levels and types of courts and tribunals and regularly appears in the appellate courts. Sam is a Member of the Chartered Institute of Arbitrators and is admitted as a practitioner in the Dubai International Finance Centre (DIFC) Court. Sam is the head of the Administrative/Public Law and the Court of Protection team at Kings and is also the Director of Pupillage Training.



Francesca P. Gardner

Francesca is a specialist in all areas of mental capacity and mental health law. Her practice encompasses all areas of Court of Protection work, including welfare disputes, serious medical treatment and property and affairs matters. Francesca receives instructions from individuals, the Official Solicitor, local authorities, NHS bodies and care homes and regularly acts in complex welfare proceedings and has a particular interest and experience in cases involving cross border placements and disputes, children and deprivation of liberty, the international protection of adults and safeguarding vulnerable adults within the Inherent Jurisdiction of the High Court.

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