

## ARIANNA KELLY

Year of call: 2013

Qualifications: Harvard Law School, J.D., cum laude, LLM

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



### Profile

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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 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.

**Year of Call:** 2013

### Areas of Expertise

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#### **Court of Protection: Health & Welfare**

Arianna acts in a range Court of Protection matters including those relating to welfare, deprivations of liberty, property and affairs and serious medical treatment, acting for local authorities, health authorities, family members and on behalf of the Official Solicitor. Arianna is ranked in Chambers & Partners UK as an 'Up & Coming' Junior in Court of Protection: Health & Welfare: All Circuits. Arianna is a member of the National Committee for the Court of Protection Practitioners Association.

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...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 regularly acts in and advises on complex matters relating to:

- sexual capacity and contact with others;
- the intersection of the Mental Capacity Act and the Mental Health Act;
- potential Human Rights Act claims arising out of deprivations of liberty;

Arianna has a significant public law and community care practice and regularly advises and acts in public law matters arising out of Court of Protection matters.

She also regularly acts and advises in matters relating to the inherent jurisdiction of the High Court. Arianna is available for urgent or out-of-hours applications in both Court of Protection and inherent jurisdiction applications.

Arianna frequently lectures and trains on issues relating to mental capacity law and the Court of Protection, including trainings for best interests

and mental capacity assessors.

## **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.

## **Health & Social Care**

Arianna works extensively in the field of community care, regularly acting for local authorities, health authorities and private individuals in community care and healthcare matters. Arianna has been involved in a range of judicial reviews of community care assessment and eligibility decisions, and advises on matters relating to ordinary residence, charging, deferred payment agreements and debt recovery.

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 regularly writes for LexisNexis, Westlaw, Sweet & Maxwell and Local Government Lawyer on community care, and has authored a chapter on community care in Judicial Review: Law & Practice (3<sup>rd</sup> Edition) and a chapter on community care charging in Community Care Law and Local Authority Handbook (3<sup>rd</sup> Edition). She worked with many local authorities on the implementation of the Care Act 2014 and regularly trains on issues of community care law.

Arianna has given dozens of lectures and trainings on community care, and is happy to speak to large or small groups and a range of professional

audiences.

## Judicial Review

Arianna accepts instructions in a range of public law judicial review matters. She works extensively in the field of community care. Arianna frequently advises in and undertakes judicial review work in relation to eligibility and care planning decisions, as well as on issues relating to community care charging and debt recovery. She also advises public authorities on policies relating to health and social care. Arianna has been published on community care finances and offered extensive trainings in these areas.

## Inquests

Arianna accepts instructions on inquest matters, particularly those relating to detention under the Mental Capacity Act or Mental Health Act, or deaths in care homes.

## Appointments

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Attorney General's Regional C Panel of Counsel

Equality and Human Rights Commission Panel of Counsel

## Memberships

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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

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- 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

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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

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"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

