

FRANCESCA P. GARDNER

Year of call: 2009

Qualifications: Bar Vocational Course

Clerked by: Mark Ronson Luke Heywood

AREAS OF EXPERTISE:

Administrative & Public Law Court of Protection: Health & Welfare Court of Protection: Property & Affairs Health & Social Care Inquests Judicial Review Local Government



Profile

Francesca is a specialist in all areas of mental capacity and mental health law. Francesca's practice encompasses all areas of Court or Protection work, including welfare disputes, serious medical treatment and property and affairs matters. Francesca receives regular instructions from individuals, the Official Solicitor, local authorities, NHS bodies and care homes. Francesca regularly acts in complex welfare proceedings and has a particular interest and experience in cases involving: cross border placements and disputes (with particular interest in cross border placements from Scotland); children and deprivation of liberty; the international protection of adults (for example, Francesca has recently been instructed to advise on cases involving Japan, Kenya and the United States of America); cases involving both welfare and financial disputes; and safeguarding vulnerable adults within the Inherent Jurisdiction of the High Court.

Francesca's practice is unique in that Francesca specialises in Health & Welfare and Property & Affairs within the Court of Protection. Francesca's property and affairs practice regularly involves advising on issues relating to: the scope of the role of a financial deputy, lasting powers of attorney; statutory wills and financial abuse.

Francesca also has extensive experience in Mental Health Law, including representing patients before the First- Tier Tribunal and Nearest Relative Displacement Proceedings. Francesca has extensive experience in cases concerning the interface between the Mental Health Act 1983 and the Mental Capacity Act 2005.

Francesca also has a particular interest in and regularly advises on matters of social care charging, with a particular focus on debt recovery.

Significant Cases

North Yorkshire County Council v Elliott [2019] EWFC 37

B-v-a Local Authority [2019] EWCA Civ 93

Re B (Capacity: Social Media: Care and Contact) [2019] EWCOP 3

SR v A Local Authority &Anor [2018] EWCOP 36

The Hospital Trust v V & Ors [2017] EWCOP 20

AG, Re [2016] EWCOP 37 (6 July 2016)

SAD & Anor v SED [2017] EWCOP 3

LCC v J K [2016] EWCOP 59

NCC v TP (Capacity of TP) [2016] EWCOP B3

NCC v TP [2016] EWCOP B4

NCC v TP (Best Interests) [2016] EWCOP 61

IH (Observance of Muslim Practice) [2017] EWCOP 9 (12 June 2017)

Year of Call: 2009

Areas of expertise

Administrative & Public Law

Court of Protection: Health & Welfare

Francesca practices in all areas of Court of Protection, including welfare disputes, serious medical treatment and property and affairs matters. Francesca receives regular instructions from public bodies (including local authorities, health trusts and CCGs), private individuals and the Official Solicitor.

Francesca was appointed as an Accredited Mental Health Tribunal Panel Member in 2013 and has experience in all Mental Health Act matters including complex restricted matters and those that inevitably overlap with the Mental Capacity Act 2005. Francesca has experience of representing the protected party before concurrent proceedings before the First-Tier Tribunal and the Court of Protection and Nearest Relative Displacement Proceedings.

Francesca has extensive experience in cases concerning the interface between the Mental Health Act and the Mental Capacity Act.

Children and Mental Health, Mental Capacity and Deprivation of Liberty

Francesca has extensive experience involving the complex area of children and mental health and mental capacity law. Francesca has experience of representing children, public bodies and family members in cases involving children detained under the Mental Health Act, cases under the Inherent Jurisdiction of the High Court seeking the court's authorisation for the deprivation of a child's liberty and claims under the Human Rights Act 1998 for unlawful deprivation of a child's liberty and breaches of Article 8 of the ECHR as a result of the failings of public authorities in care proceedings.

Francesca regularly provides advice to local authorities and children's Guardians in relation to the complex area of consent and deprivation of liberty in children's cases.

Significant Reported Cases

Re B (Capacity: Social Media: Care and Contact) [2019] EWCOP 3

The Hospital Trust v V & Ors [2017] EWCOP 20

AG, Re [2016] EWCOP 37 (6 July 2016)

SAD & Anor v SED [2017] EWCOP 3

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NCC v TP (Best Interests) [2016] EWCOP 61

IH (Observance of Muslim Practice) [2017] EWCOP 9 (12 June 2017)

Court of Protection: Property & Affairs

Francesca is a specialist in all areas of Court Protection work. Francesca's practice is unique as she specialises in Property & Affairs work and Health and Welfare. Francesca routinely advises on complex financial cases, including cases flowing from or overlapping with personal injury or clinical negligence claims.

Francesca regularly receives instructions from a broad range of clients in property and affairs work including: the Official Solicitor; professional and lay deputies; family members and public bodies.

Francesca has particular interest and expertise in cases involving the following: statutory wills; the appointment of deputies; the scope of the authority of a deputy; financial abuse; lasting powers of attorney and gifts. Below are some examples of cases Francesca has been instructed in:

- In **SAD & Anor v SED [2016] EWCOP 3**: Francesca represented the daughters of P in the first post MCA case to consider the issue of capacity to revoke a lasting power of attorney ("LPA"). P decided with capacity to appoint her daughters under a LPA. The evidence before the court indicated that the LPA was executed to guard against the financial consequences of hypomania resulting from her bipolar disorder. P revoked the LPA and this was challenged by the daughters. The court gave helpful guidance as to the information relevant to the decision to revoke a LPA.
- Francesca routinely advises in proceedings flowing from or related to personal injury proceedings. Francesca has recently advised on the management of a damages award for a prisoner that lacks capacity to manage the award and the management of a damages award for a young man seriously injured in a road traffic accident. Francesca has extensive experience of advising in relation to personal injury and clinical negligence claims that require consideration of applications that are to be made in the Court of Protection in circumstances where

- the protected party lacks capacity, including applications to authorise any deprivation of liberty arising from the care package.
- Francesca advised and represented a professional deputy in relation to an application for authority to execute a statutory will in complex circumstances which included: suspected financial abuse; service outside of the jurisdiction; suspected fraudulent activities of a charity and an application to dispense with service.
 - Francesca advised the lay deputy on a complex matter involving significant historical gifts made from P's estate. The case involved the Office of Public Guardian and the appointment of a professional deputy.
 - Francesca advised and represented the professional deputy in complex proceedings before the Court of Protection which involved issues of serious financial abuse; suspected abduction of P and complex issues of disclosure.

Francesca provides regular training in this area and has experience of providing training events and seminars to practitioners, including public bodies and professional deputies.

Health & Social Care

Francesca is regularly instructed in health and social care matters, including community care and healthcare disputes. Francesca regularly advises on Ordinary Residence disputes, including matters with a cross-border issue. Francesca provides regular training in this area, to both professional and lay clients, including speaking at the national Scottish Social Work Conference.

Inquests

Francesca accepts instructions on inquest matters, particularly those relating to detention under the Mental Health Act or the Mental Capacity Act.

Judicial Review

Francesca regularly receives instructions in Judicial Review proceedings, particularly cases involving community care and mental health.

Local Government

Memberships

Member of Grays Inn 2009

Member of the North Eastern Circuit

Court of Protection Practitioner's Association - Chair (Yorkshire & the Humber)

Training

Francesca provides regular training and seminars to: lawyers, medical and social care professionals and other professionals in the field. Recent training topics have included:

- Cross Border disputes and Ordinary Residence (with particular focus on cross border placements to and from Scotland)
- The interface between the Mental Health Act 1983 and the Mental Capacity Act 2005;
- Deprivation of Liberty, covering all areas: including children & deprivation of liberty;
- Religious observance and the incapacitated adult;
- consent to sexual relations and the obligations of the State;
- The international protection of adults
- Deprivation of assets;

Property & Affairs:

- The role of the deputy and deprivation of liberty;
- Statutory Wills;
- Gifts;

- capacity to revoke a Lasting Power of Attorney.

Publications

1. 'The Cold Front'- [Private Client Advisor](#)
2. ' Support Network: [litigation friends](#)- Private Client Advisor

Qualifications

Bar Vocational Course - BPP Law School- 2009

Recommendations

Legal 500, 2020:

"Francesca is dedicated and committed to achieving outcomes that are beneficial to vulnerable clients and their families. She is not phased by more senior counsel or complex situations and remains collected and professional at all times."

Chambers UK 2020:

"She is an excellent advocate; she's very easy to listen to and is very sensible and kind." "She is wonderful and you can depend on her to get the job done. She is very thorough, her drafting is superb and she thinks very much outside the box."

Legal 500 2018:

Shortlisted in the Legal 500 Awards for 'Regional Junior of the Year 2018.'

Legal 500 2018:

"Extremely bright and very talented."

Chambers UK 2018:

"She is tenacious, eloquent, caring and incredibly talented, which means that she is in increasingly high demand for the most complex of Court of Protection cases."

"She has a tremendous amount of experience and is not afraid of novel or complex issues in a case. She works tirelessly to try to ensure the right result for her client."

"Francesca's approach to matters is highly methodical and committed. She puts forward the clients' issues and concerns with great aplomb."

Legal 500 2017

Shortlisted in the Legal 500 Awards for 'Regional Junior of the Year 2017.'

"An up- and - coming star in the area of Court of Protection, her practice includes a range of mental health and capacity cases involving deprivation of liberty, covert medication and human rights matters."

Chambers UK 2017

"She has a clear grasp of complicated issues and the ability to convey that to clients."

"She is very clear, concise and cuts through all of the nonsense."

"Ranked as 'Up and Coming' in Court of Protection.

