

## FRANCESCA P. GARDNER

Year of call: 2009

Qualifications: Bar Vocational Course

Clerked by: Mark Ronson Luke Heywood

**AREAS OF EXPERTISE:**

Court of Protection & Mental Health Health & Social Care  
Inquests Judicial Review



### Profile

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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

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

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#### Court of Protection & Mental Health

Francesca practices in all areas of Court or 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, 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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### **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.

### **Memberships**

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Member of Grays Inn 2009

Member of the North Eastern Circuit

## Training

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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

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

## Qualifications

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Bar Vocational Course - BPP Law School- 2009

## Recommendations

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### 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.

