

SIMON BURROWS

Year of call: 1990

Qualifications: B.A. (Dunelm) Dip Law LLM

Clerked by: William Brown Mark Ronson

AREAS OF EXPERTISE:

Administrative & Public Law Court of Protection & Mental Health
Inquests



Profile

Simon is a leading practitioner in mental health and capacity law and associated fields.

- Many landmark cases in these fields- & continuing to advise and represent parties at the “cutting edge”.
- Regularly instructed by public authorities in serious safeguarding cases, including those concerning the capacity to consent to sexual relations and marriage, particularly where there is a risk of travel abroad.
- Many leading cases concerning the interface between the Mental Health Act and Mental Capacity Act.
- Acts for public authorities (NHS bodies and Local Authorities) in inquests, usually involving an investigation of systemic failings.
- Cases involving the mental health of children and young people where care or medical treatment is involved.
- Financial issues arising out of welfare cases and advising Deputies on issues arising out of the interface between welfare and property and affairs, including statutory wills.
- Mental health tribunals (including the Upper Tribunal). Has been concerned with many of the cases that have developed the interface between the Mental Health Act and the Mental Capacity Act.
- Increasingly involved in damages claims involving breaches of Human Rights and unlawful detention
- Common law claims for damages for negligence and unlawful detention arising out of psychiatry and social care.
- Judicial review cases concerning mental health and social care as well as habeas corpus.
- Serious Medical treatment cases
- Inherent jurisdiction of the Court.
- Trains Court of Protection judges and Tribunal members on mental health and capacity law for the Judicial College.

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Areas of Expertise

Administrative & Public Law

Simon is regularly instructed to act and represent (for individuals and public authorities) in public law challenges to administrative decisions- principally concerning mental health detention (including applications for habeas corpus) and community care funding. He also acts in the Upper Tribunal in cases concerning challenges to the First Tier Tribunal in Mental Health Cases

Significant Reported Cases:

R (GP) v Derby City Council [2012] EWHC 1451 (Admin)(HHJ Pelling, Q.C. Deputy HC)

R (RB) v First Tier Tribunal [2010] UKUT 160 (AAC) (Carnwath, LJ, Paul Walker, J, Judge Rowland)- case concerning the scope of review by the FTT of its own decisions)

Secretary of State for Justice v RB [2010] UKUT 454 (AAC) (Carnwath, LJ, HHJ Sycamore & Judge Rowland)- (Precedential value of High Court decisions in previous mental health jurisdiction- stare decisis).

AMA v Greater Manchester West Mental Health NHS Foundation Trust [2015] UKUT 0036 (Mr Justice Charles)

PJ v A local health board, The Welsh Ministers & The Department of Health [2015] UKUT 0480 (Mr Justice Charles)

Court of Protection & Mental Health

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.

Significant Reported Cases:

P (by the Official Solicitor) v Cheshire West & Chester Council [2014] UKSC 19- landmark decision defining deprivation of liberty within a social care setting.

Cheshire West & Chester Council v P [2012] 1 Costs L.R. 160 (CA)- whether costs of COP appeals should be the same as in Family Proceedings.

Rochdale Council v KW (No 2) [2016] 1 WLR 198 (CA): Consent orders in the Court of Appeal, and first instance judges obligation to follow precedent. Deprivation of liberty in a person's own home.

In re A (A patient)(Court of Protection: Appeal) [2014] 1 WLR 3773 (CA): second tier appeals- application of the rule in Lane v Esdaille [1891] AC 210- steps a court must take to ensure a Article 5 compliant review.

Secretary of State for Justice v RB [2012] 1 WLR 2043 (CA): a restricted patient cannot be conditionally discharged into a deprivation of liberty.

Re X (Deprivation of Liberty) (Nos 1 & 2) [2015] 1 WLR 2454 (Sir James Munby, P.): President's attempt to bring order to COP procedure in the wake of Cheshire West.

Manchester University Hospitals NHS Foundation Trust v M & others [2019] EWHC 468 (Fam) (Mr. Justice Hayden). Acted for Royal Manchester Children's Hospital in its application concerning the need for dialysis for M, a 13 month old child, who has no kidneys. Her parents, who had mental health problems, had objected to the treatment because God had told them M would live without it. Extremely finely balanced decision as to whether treatment in M's best interests.

Manchester City Council v LC & another [2018] EWCOP 30- (Mr. Justice Hayden) acting for LC's husband in a case where LC's capacity to consent to sexual relations, but not to contact led to particularly difficulties for her carers and the Court of Protection, as well as prurient coverage in the national press.

An Acute Trust & A Mental Health Trust v X (unreported 2017) (Mr Justice Williams)- inherent jurisdiction used to require under 18 year old to undergo serious medical treatment - where he would be deprived of his liberty.

Acted for Claimant's wife in HRA settlement (with Francesca P. Gardner) associated with **CH v Metropolitan Council** [2017] EWCOP 12 (Sir Mark Hedley)

IH (Observance of Muslim Practice) [2017] EWCOP 9 (Mr Justice Cobb): consideration of the approach the COP should take to religious observance, in this case Islam.

Re A (A Child) (Medical Treatment: Removal of Artificial Ventilation) [2015] EWHC 443 (Fam)(Mr Justice Hayden): the definition of "death" in English law, contrasted with that in Islamic law- the High Court under parens patriae/inherent jurisdiction, should determine whether a person should have artificial ventilation withdrawn, in the event of a dispute, and not the Coroner, even though there is an overlap of jurisdiction.

Liverpool City Council v SG [2014] EWCOP 10 (Mr Justice Holman): deprivation of liberty in children's homes.

R (GP) v Derby City Council [2012] EWHC 1451 (Admin)(HHJ Pelling, Q.C. Deputy HCJ): habeas corpus/judicial review of MHA detention.

C v Blackburn with Darwen BC & others [2011] EWHC 1923 (Mr Justice Peter Jackson): overlap between guardianship (MHA) and DOLS (MCA)- COP should resolve best interests disputes.

GJ v Foundation Trust, PCT & Secretary of State for Health [2010] 3 WLR 840 (Mr Justice Charles): where DOLS can be used in a hospital.

AMA v Greater Manchester West Mental Health NHS Foundation Trust [2015] UKUT 0036 (Mr Justice Charles): the rights of a welfare deputy to withdraw a patient's appeal against MHA detention.

PJ v A local health board, The Welsh Ministers & The Department of Health [2015] UKUT 0480 (Mr Justice Charles): the extent to which the tribunal should investigate whether patient's Article 5 rights are engaged by a CTO.

Inquests

Simon acts mainly for public authorities (NHS Trusts and Local Authorities) but also for families and victims in inquests. These cases are usually lengthy and involve the consideration of the way institutions have (or have not) caused the death of the person concerned. Often they involve a technical understanding of the Mental Health Act. Much of his work involves addressing how systems can be improved to avoid future deaths- this involves working closely with public authorities in understanding not only what systems were in place at the time of the death, but what has happened since, and should happen, to avoid the repetition of similar incidents.

Significant Recent Cases:

Re A (A Child) (Medical Treatment: Removal of Artificial Ventilation) [2015] EWHC 443 (Fam)(Mr Justice Hayden)- concerning the role of the coroner & the inherent jurisdiction and parens patriae where a brain dead child was ventilated by a Hospital. Meaning of “death” in English Law, where parents are Muslim and death has a different meaning under Islamic Law.

Re: Edwards-Gill (2018- ongoing) (Inquest acting for local authority and its children and young persons mental health scheme- SHARE). Concerning the death of a 16 year old, on a railway line, and the adequacy of the support he received from a number of services, including CAMHS and SHARE.

Re James (2018): (Inquest acting for the local authority) where a patient discharged from Mental Health Act detention was placed in a care home, and later assaulted Mrs. J, causing her death. Issues concerning assessment of P’s risk to others.

Re Jaundoo (2016-17) (Inquest- acting for the local authority)- a young and vulnerable man was released from prison to a supported living placement, which he shared with other ex-convicts. He was brutally murdered by three other residents, who were all jailed for his murder. The inquest over three weeks looked into the statutory framework present at the time; the relevant duties of the probation authorities, the provider of the placement and the local authority.

Re Tindle (2016)(Inquest with a jury- for NHS Trust) The death of a woman subject to s. 3 of the Mental Health Act following ECT. The Coroner focused on inadequacies within the Second Opinion Approved Doctor system operated by the CQC.

Re Bennett (2016)(Inquest for the local authority)- the death of an elderly lady in need of social care, where that care was accidentally discontinued due to her supposed admission to hospital (when, in fact, she had not been). Coroner focused on communications between the various agencies concerned with her care.

Re Bell (2015)(Inquest)- death of woman with emotionally unstable personality disorder while in psychiatric hospital (for Hospital Trust)

Re Gadsby (2015) (Inquest) - death of woman killed by her son who had been conditionally discharged from hospital following his detention under s. 37/41 Mental Health Act 1983 having killed his father and seriously injured his mother 4 years earlier. (For Local Authority)

Re TR (Inquest- on-going)- death of a young man with learning disabilities and challenging behaviour placed in a care home by the Court of Protection under an order (for placing Local Authority)

Memberships

Northern Circuit

Inner Temple

Court of Protection Practitioners Association (Vice Chair- National Committee and North West Committee)

Appointments

Tribunal Judge (part time), First-tier Tribunal, Mental Health (since 2003)- (member of the specialist CAMHS panel since 2018)

Nominated Judge of the Court of Protection (since 2018)

Chair of the board of Trustees of Advocacy Focus.

Trustee of AFC Fylde Community Foundation

Qualified mediator

Pupil supervisor

Publications

Author: Atkins Court Forms- Mental Health Act Proceedings (Vol 26(1)) Butterworths/Lexis Nexis 2017

Contributor- Chapters on “Tribunals” and “Mental Health” in Judicial Review: Law & Practice (Patterson & Karim) (Second Edition) Jordans 2014

Contributor: Chapter on “Health Care and Social Care” in Community Care Law & Local Authority Handbook (Butler) (Third Edition) Jordans 2015

Mental Health and Capacity in Civil Court Practice (The Green Book) Lexis Nexis to be published in 2019

A practitioner editor of International Journal of Mental Health & Capacity Law.

Qualifications

B.A. (Dunelm) Dip Law LLM

Recommendations

Ranked as a Leading Junior in Court of Protection and Administrative and Public Law in Chambers and Partners and Legal 500.

Legal 500, 2020

"Prompt and considered in his advice."

Chambers UK 2020

"He's pragmatic, knowledgeable, good on his feet and a very safe pair of hands." "A very skilled advocate who is able to narrow the issues and be forceful when needed in court. He takes a practical approach in mental health tribunals in terms of finding the best outcome for the client." "Simon is a pragmatic and skilled tactician. He has a very good depth of knowledge, particularly in mental health."

"He's able to present a case well in terms of getting succinctly to the issues before the judge." "He sits as a First-tier judge in the Mental Health tribunal and sees how things are on the ground, so is very knowledgeable and pragmatic." "Clients find him very reassuring when he's giving advice because of his knowledge and experience."

Chambers UK 2019

"Simon brings a wealth of experience to cases and he's extremely calm under pressure. He's excellent with vulnerable clients, superb on his feet, and is respected on both sides of the bench." "He's been working in this area for more years than most, so his collective experience and nous about how these cases fit together is really helpful."

"Excellent in mental health-related judicial review."

Legal 500 2019

"A compelling advocate."

Chambers UK 2018

"Simon is a Northern powerhouse of Court of Protection counsel. He is a joy to work with, his advocacy skills are unrivalled, and he has an ability to get to the real issues in a case, which means they are dealt with quickly and efficiently."

"He is quite an intellect. He knows the law very well. Also, he is a brave advocate who doesn't shy away from taking difficult points." "A nice client-handling manner. He is always well prepared and has a nice sense of humour. Also, his submissions are always interesting and effective."

Legal 500 2018

"He uncovers the key issues of a case."

"Very quick-witted and fantastic with clients."

Chambers UK 2017

"He's excellent and brilliant with litigants in person." "He takes a pragmatic approach and provides thorough, robust advice."

"He is very good at putting parties at ease. He has a nice manner, he's approachable and his drafting is faultless."

Legal 500 2017

"Extremely knowledgeable and approachable."

Chambers UK 2016

"Very knowledgeable, logical and to the point."

"Incisive, responsive and a commanding figure during difficult negotiations. He inspires confidence from the client and the court."

"He is a measured and intelligent advocate who never shies away from an uphill struggle."

"He's very careful to pitch his defence of a public authority at their strongest points which makes him an effective advocate."

