

Transparency in the 'secret court'

Criticisms of the Court of Protection have raised the question of whether it should be opened up to more media scrutiny, say **Jacqueline Almond** and **Catherine O'Reilly**



Jacqueline Almond, pictured, is a partner and Catherine O'Reilly a solicitor at IBB Solicitors @IBB_Solicitors www.ibblaw.co.uk

A woman has recently been told that she cannot give instructions on her sick, mentally ill daughter's behalf during litigation proceedings in the

Court of Protection.

The daughter, who is 32 years old, lacks the mental capacity to give instructions herself. However, following a preliminary hearing, Mr Justice Peter Jackson, who is overseeing this case, ruled that decisions might have to be made which could have 'mortal consequences' for the young woman. He noted that the issues would need to be dealt with 'dispassionately' and that this would be too much to expect of any parent. The case is expected to return to court for treatment options to be discussed at a hearing in April, and, in the meantime, Jackson J has also ruled that neither the daughter nor the institutions responsible for her care can be identified.

The progression of this case is

once again likely to raise the issue of transparency in the Court of Protection, the so-called 'secret court'.

It is often said that public access to court proceedings, either through accessible hearings or open reporting in the media, plays a fundamental part in upholding the principle of justice and gives the public confidence that justice is being done correctly. This media access has, however, been resisted in family and Court of Protection proceedings until quite recently. A series of recent comments by the judiciary and the press have raised the question of whether the Court of Protection would benefit from being opened up to more media scrutiny.

In 2014, District Judge Anselm Eldergill said that there 'seems to be no good general reason for not permitting accredited members of the Press to attend hearings in the Court of Protection'. These comments followed those of Mr Justice Charles, who indicated that the Court of Protection's routine secret hearings could actually be in breach of human rights laws.

However, difficulties arise because of the subject matters that the Court of Protection is often required to deliberate upon. While transparency is to be encouraged in legal proceedings, the matters brought before the Court of Protection are often private and sensitive, relating to health or financial issues.



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Recently, the brilliantly entertaining satirical musical *The Scottsboro Boys* has taken the west end by storm. A moving tale of a deplorable miscarriage of justice, which brought about the end of all-white juries in Alabama, the musical tells the tale of the Scottsboro boys, nine black teenagers who were falsely convicted of raping two

Salami slicing justice

white girls in 1931.

The play serves as a reminder of the fallibility of the court process. Although we would like to put such atrocious injustices behind us, the Criminal Cases Review Commission, set up following the release of the Birmingham Six, has quashed of hundreds of unsafe convictions. Recently, Victor Nealon and Sam Hallam spent 24 years combined in jail for murder and attempted rape: crimes they did not commit. These harrowing years have caused them post-traumatic stress disorder, unemployment, and poverty.

Until last year, a miscarriage of justice was said to have occurred, and compensation was paid, when a new fact 'so undermines the evidence against the defendant that no

conviction could possibly be based upon it'. This is a fairly high threshold: when no jury would ever consider the defendant guilty.

Theresa May, however, in a desperate attempt to compete with Chris Grayling's astonishing endeavours to make money by salami slicing justice, has changed the law to remove the presumption of innocence from those who have been wrongly convicted. A 'miscarriage of justice' is now defined as 'a case where the newly discovered fact shows beyond reasonable doubt that the applicant was innocent'.

These proposals put an extremely onerous evidential burden on the individual. They have to prove that they did not commit the requisite acts with

the requisite state of mind that would make them guilty of the offence. Lord Hope envisaged 'situations where sheer proof of innocence... will be simply unattainable', especially with historical prosecutions.

Nealon and Hallam have been denied compensation for losing 24 years of life. This is being challenged. Article 6 (2) of the European Convention on Human Rights provides that 'everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law'. Strasbourg has made it clear that this would be breached if an applicant was required to prove their innocence, which is precisely what this new test is asking Nealon and Hallam to do.

The same ideology which is

Unfortunately, the lack of transparency to date has resulted in the Court of Protection being criticised by the media, which has accused the court of mishandling some £2bn of funds and depriving people of their liberty while hiding behind a screen of secrecy that it argues is essential to protect the vulnerable parties to proceedings.

Those of us who work with the Court of Protection are aware that the judges often have difficult issues to deal with and also know that the court has reduced its direct control, particularly over financial deputies. However, it is important that the public has confidence that justice is being done, and although these changes cannot be implemented overnight, comments by judges working within the court are to be welcomed to create more transparency in this sensitive area. **SJ**

YOUNGLAWYER

Speak up about stress

With Mental Health Awareness Week right around the corner, **Brogan Solomon** says it is time to take control of daily stress

In 2012, LawCare conducted a survey of 1,000 lawyers on their levels of stress. The findings showed that over 50 per cent of those questioned felt stressed and 19 per cent were suffering with clinical depression.

In 2013, the Law Society interviewed 2,226 solicitors in relation to stress at work. Of those interviewed, 95 per cent said they were stressed, with 16 per cent saying their stress was 'extreme' or 'severe'. In 2014, 36 per cent of UK callers seeking advice from LawCare about stress-related issues were below five years qualified (7 per cent of these being trainees in England and Wales).

It is clear from these statistics that stress at work is a big problem for the legal profession. And, of course, these statistics only show the tip of the iceberg, with many avoiding help and fearing it is a sign of weakness. But the taboo surrounding mental health issues is decreasing every day, and with Mental Health Awareness Week beginning on 11 May 2015, it is time to start taking control and managing daily stress.

Of those interviewed by LawCare in 2012, 65 per cent said they would be concerned about reporting their stress to their employer. However, many employers are now beginning to recognise stress as a problem for their employees and offer training and resources to assist them.

Top tips

On top of personal reasons, there are also solid business reasons for them to take mental health seriously (for example, to ensure maximum productivity from staff).

However, if you feel that your employer really cannot help, then consider some of the following tips:

- Think about work management. Consider who you can delegate work to so as to reduce your own workload. If you cannot delegate, consider categorising your work into 'urgent' and 'non urgent'. Create a diary which allows you to see which work to prioritise.
- Talk to a friend or family member about how you are feeling.
- Consider enrolling in stress management training, which in the right circumstances will provide you with biologically proven tips and techniques to help reduce or manage your stress levels.
- If you feel like stress is affecting your general health, then consider speaking to a medical expert.

In a time of ever-increasing change to the profession we can often feel lucky to have a job and, as a result, we may feel unable to speak up if there is a problem. It is important to remember that there will be other people who are or have felt the same as you, from trainees to junior solicitors and up to partner level.

The Junior Lawyers Division (JLD) strongly believes in eliminating the stigma attached to stress and, in order to work towards doing so, is arranging a number of events in relation to stress management.

Finally, do not forget the importance of organisations such as LawCare in helping you to face your problems. They provide a free and confidential helpline for legal professionals who may be facing personal or professional difficulties.

Speak up. You might just find your voice being echoed.

If you are struggling to cope with stress, depression, or addiction, call LawCare's free and confidential helpline on 0808 800 0023 (open 9am-7.30pm during the week and 10am-4pm on weekends and bank holidays) or visit www.lawcare.org.uk

Get involved in Mental Health Awareness Week by calling 020 7803 1110 or emailing the press office at press@mhf.org.uk **SJ**



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