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|  | <p>Brett Davies</p> <p>Role</p> | <p>CALLED: 2008</p> <p>BDavies@spirebarristers.co.uk</p> |
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Summary

Brett has significant experience in the Family Court and Court of Protection at all levels.

Brett has particular experience in dealing with cases involving children whose care plans amount to a deprivation of liberty within the meaning of Article 5 and require court authorisation.

Areas of Practice

COURT OF PROTECTION: HEALTH AND WELFARE

Brett regularly appears in the Court of Protection before all tiers of judge. He is robust in presenting clients' cases and brings a common sense and pragmatic approach to proceedings. He was involved in the case of *AMDC v AG & Anor* [2020] EWCOP 58 where the High Court spelled out guidance to experts and professionals undertaking capacity assessments.

Brett has a wealth of experience advising in matters under the Care Act 2014, the Mental Health Act 1983, and in National Health Service Continuing Healthcare funding. These issues regularly crop up in the Court of Protection – such as identifying which public authority owes statutory duties to P, or how alternative options may be funded and made available to the court – and Brett is particularly well placed to advocate such arguments on behalf of clients.

Brett has particular skill in bringing together different public authorities who each owe duties to P to bring about a holistic, joined-up approach, to any care, support or health package.

PUBLIC LAW CHILDREN

Brett has significant experience in public law care proceedings, from interim removal applications, contact disputes, complex disclosure applications, through to final hearings.

Brett's expertise in advising in cases where a child has a restrictive care package which may amount to a deprivation of their liberty (whether or not secure accommodation), building on his Court of Protection experience, is particularly sought after. Similarly, where issues of capacity or 'Gillick' competence arise in care proceedings, Brett brings particular knowledge to the table.

PRIVATE LAW CHILDREN

Brett has experience in contested private law proceedings and welcomes instructions in these matters.

JUDICIAL REVIEW

Brett has extensive experience in advising in age assessments in many contexts, including 'eyes on' assessments in obvious cases based largely on physical appearance and demeanour, Merton assessments, and where the young person claims to have been trafficked. Brett is happy to get involved and advise at an early stage in any litigation (which are often the more crucial stages). Brett also advises in general judicial review proceedings in the context of health and social care.

Brett regularly advises in ordinary residence and designation disputes between local authorities, Clinical Commissioning Groups, and other public authorities in both adult social care and children's social care. Brett also advises in charging and deprivation of assets under Care Act 2014, s.117 Mental Health Act 1983, and eligibility (and challenges) for NHS Continuing Healthcare.

Notable Cases

AMDC v AG & Anor [2020] EWCOP 58 judgment of Poole J offering guidance to experts undertaking capacity assessments for the court.

Re B (Secure Accommodation Order) [2019] EWCA Civ 2025 (led by Frank Feehan QC) – leading judgment from as to the when s.25 Children Act 1989 (secure accommodation) should be used to restrict children's liberty as opposed to orders under the inherent jurisdiction of the High Court.

Re Y (A Child) [2019] EWCA Civ 2209 – unsuccessful appeal as to designation under care order where child had no 'ordinary residence.'

Wakefield Metropolitan District Council & Anor v DN & Anor [2019] EWHC 2306 (Fam) – judgment of Cobb J dealing with orders under inherent jurisdiction for a vulnerable, capacitous adult and making anticipatory declarations as to DN's capacity and best interests under the section 15 and 16 of the Mental Capacity Act 2005, to cover those occasions when he has 'meltdowns' and is unable to make a capacitous decision as to his care.

Re E (Scottish Adopters English Adoption Proceedings) [2019] EWFC 9 Cobb J Judgment confirming that the adoption application in respect of a child placed for adoption in Scotland with Scottish adopters could be determined in the Family Court of England & Wales.

Re C (Children) (Designation) [2018] EWCA Civ 900 – McFarlane LJ Successful appeal to Court of Appeal against the order of HHJ Dancey designating the City of Wakefield MDC under a care order for two children who lived with a relative under a residence order in Dorset.

Re IH (Observance of Muslim Practice) [2017] EWCOP 9 Cobb J (led by Nageena Khaliq QC) - Application concerning the degree to which a person without capacity should be assisted in adhering to Islamic religious observances.

Re G (A Child: long-term accommodation: section 20 Children Act 1989) [2017] EWHC 78 (Fam) – Cohen J – successful application for declaratory relief that the use of long-term use of section 20 was appropriate for a teenager in residential placement and that care proceedings should not be brought.

Re S (Child as parent: Adoption Consent) [2017] EWHC 2729 Cobb J (led by Bridgette Dolan QC) – Judgment explaining how the "Gillick" test applies to a young person highlighting the three key principles relevant to decision-making under the Mental Capacity Act 2005 and their application to Gillick decisions, and defining the relevant information for assessing capacity in respect of the decision of consenting to the adoption of a child.

Re RA (Baby Relinquished for Adoption: Case Management) [2016] EWFC 25 (led by William Tyler QC) – Cobb J High Court guidance case as to practice and procedure in seeking declaratory relief in cases of children relinquished for adoption.

Appointments and Memberships

- Inner Temple
- Court of Protection Practitioners' Association
- Court of Protection Bar Association
- Family Law Bar Association

Legal Directories

Brett was awarded the Rising Star Award at the Yorkshire Lawyer Awards on 12 October 2017, in large measure for his work in promoting the rights and autonomy of vulnerable adults.

Brett was awarded the People Lawyer of the Year at the Lawyers in Local Government Awards in 2017, and was highly commended in the Legal Professional of the Year in 2018.

Publications

- “Duty to provide relevant evidence in special educational needs cases”, Local Government Lawyer, July 2021 Duty to provide relevant evidence in Special Educational Needs cases (localgovernmentlawyer.co.uk)
- “Applications for review in special educational needs cases”, Local Government Lawyer, May 2021 Applications for review in Special Educational Needs Cases (localgovernmentlawyer.co.uk)
- “The boundary between education and healthcare provision in education, health and care plans: to what extent does the SEND Tribunal Single Route of Redress National Trial represent a move towards a more holistic approach?”, Journal of the Centre for Rights and Justice, Nottingham Law School, March 2020, Vol 1(i)
- “A more holistic approach to meeting children’s and young people’s needs?”, Legal Action Magazine, August 2019