



Joseph O'Brien

Head of Court of Protection

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Year of Call: 1989

Joseph O'Brien is a leading junior in the market who is widely acknowledged as "the godfather of the Court of Protection." He acts for a broad range of clients including local authorities, clinical commissioning groups and the Official Solicitor. He has a broad practice that encompasses medical, welfare, and property and affairs matters, and is a noted expert in deprivation of liberty cases.

Strengths: "He is brilliant, very effective and one of the best cross-examiners in this field." "He is one of the best advocates at the Bar and is a real pleasure to work with. His standards never fall and he's completely reliable." "An exceptionally charming advocate who really knows his stuff but also attracts the attention of the court when presenting cases." **Chambers UK Bar 2022: Star Individual**

'Recommended expert' **Legal 500 2022**

Joseph read law at the University of Newcastle upon Tyne. After graduating he became a lecturer in law in the Faculty of Law, University of Newcastle upon Tyne. He was called to the Bar in 1989. He undertook a pupillage in Newcastle upon Tyne and joined chambers in 1990. He remained in practice in chambers in Newcastle upon Tyne until May 2004 when he returned to his home city of Sheffield, joining Paradise Chambers.

He practises in personal injury, clinical negligence, professional negligence, employment, public law and human rights, adult social care and in the Court of Protection.

Membership

- North Eastern Circuit

- Personal Injury Bar Association
- Administrative Law Bar Association

Legal Directory Recommendations

“A force of nature – it is outstanding how he can turn a case on its head once he gets on his feet. He really is just an outstanding advocate.” “Incredible on his feet and he knows the courts so well.” “In terms of all-round experience and skill he is unsurpassed – he can win the unwinnable cases.”

Chambers UK Bar 2021: Star Individual

“The barrister that you love to have on your side and you hate to see acting on the other side. His advocacy, particularly cross examination, is unsurpassed by any other barrister but his written work, knowledge of the law and ability to see the picture are also key strengths.” **Legal 500 2021**

“He’s excellent, and very much ahead of the game in this area of law. He’s very good with clients, is extremely knowledgeable and a fantastic advocate.” “It’s amazing the speed with which he picks things up and prepares his cases, and he’s second to none on his feet in court.” **Chambers UK Bar 2020**

“He remains the king of Court of Protection work on circuit.” **Legal 500 2020**

“He’s the best barrister for Court of Protection work in the country. He’s fantastic on the law, and is a great strategist and cross-examiner.” “He’s very charming in court and brings a real lightness to proceedings, as well as heavyweight legal chops.” **Chambers & Partners 2019**

“A barrister who takes no prisoners.” **Legal 500 2019**

Strengths: *“His work rate is phenomenal and he always makes himself available. He’s exceptionally good.”* **Chambers & Partners 2018**

“He excels in his knowledge of the law.” **Legal 500 2017**

Strengths: *“He has a legally encyclopedic knowledge of the Court of Protection. On top of this, he’s fantastic at framing arguments, gives excellent advice, is brilliant with different clients and parties, and is fabulous on his feet”. “He is the Grana Padano of Court of Protection Law, having been involved in all of the big cases”. –* **Chambers & Partners 2017**

“Undoubtedly the most outstanding barrister for Court of Protection cases.” – **Legal 500 2016**

“Widely regarded as one of the single best courtroom performers doing the work. Peers exhaust their thesauri when extolling his advocacy, written submissions and experience. His name is synonymous with the Court of Protection.”

Strengths: *“Deservedly considered one of the best, if not the best Court of Protection practitioner in the country. The quality of his written work is exceptional, which is helped by his unsurpassed knowledge of the most up-to-date case law. He can win even the most seemingly hopeless of cases and is absolutely brilliant with lay clients.” “He is fabulous. He is absolutely the star of the Court of Protection Bar.”*
– **Chambers and Partners 2016**

Court of Protection “*Star Individual*” – **Chambers & Partners 2016**

Court of Protection “*Star Individual*” – **Chambers & Partners 2015**

“A true star of the Court of Protection Bar and a first choice of the Official Solicitor on sensitive cases. He is instructed on landmark cases throughout the country” “The king of CoP, he is supremely knowledgeable. He is a fine orator and a dedicated advocate who can always be relied upon to make the best of a case” “Despite his entirely deserved position at the top of the Court of Protection tree, he retains a down-to-earth personality.” – Chambers & Partners 2015

“A leading practitioner in Court of Protection matters.”- Legal 500 2015

Court of Protection: Star Performer – **Chambers & Partners 2014**

Court of Protection: Star Performer – **Chambers & Partners 2013**

“An unquestioned leader in Court of Protection matters. ‘His knowledge of case law is almost unrivalled,’ one interviewee stated” and “has a ‘stellar reputation’ for judicial review work in the area of education and social care provision”

Court of Protection: Star Performer – **Chambers & Partners 2012**

EXPERTISE

Court of Protection

For many years Joseph has been recognised as a leader in the field of adult social care and Court of Protection proceedings. He is regularly instructed by local authorities, hospitals, CCGs and other health care providers. Joseph is also instructed by the Official Solicitor and family members. He regularly advises pre issue providing comprehensive guidance on evidence and focussing on the issues which need to be determined.

Joseph appears in medical and welfare cases. In addition, he is often instructed in contested property and affairs applications.

Since the onset of the argument about what is ‘deprivation of liberty’, Joseph has been at the cutting edge of this jurisprudence. He has appeared in a number of the leading cases and lead in the Supreme Court in the case of *P v Cheshire West and Chester Council* [2014] UKSC 19 (leading Ian Goldsack).

Joseph’s experience of public law, human rights, mental health and personal injury/clinical negligence ensures that his advice and representation is of the highest quality.

In the field of adult social care he has regularly advised public authorities on service provision, commissioning and procurement issues. He appears regularly in the Administrative Court on applications for judicial review.

Joseph has delivered numerous papers to judges, barristers, solicitors and other professionals at local and national conferences.

Cases

Re Z (A Child: Deprivation of Liberty: Transition Plan) [2020] EWHC 3038 (Fam) (12 November 2020)

Knowles J offering a pointer to good practice for local authorities and families seeking to move a child into a placement where restraint and restrictions on liberty are required. Joseph was for the local authority and Lorraine Cavanagh QC led Ben McCormack for the parents of the subject child. The case is reported on BAILII.

Re X (Deprivation of Liberty) & ORS (2014): As a matter of principle, there was no obstacle to a person who allegedly lacked mental capacity participating and being represented in proceedings in the Court of Protection without being joined as a party; nor was there any fundamental principle that such a person, if participating as a party, had to have a litigation friend. However, those and other matters required urgent consideration by the ad hoc, non-statutory committee which had been set up to review the Court of Protection Rules 2007.
[2014] EWCOP 37. CP (Sir James Munby PFD) 16/10/2014

Re X & ORS (Deprivation of Liberty) (2014): As part of the process of devising a standardised system for dealing with cases where care arrangements for mentally incapacitated persons might amount to a deprivation of their liberty within the meaning of ECHR art.5, the Court of Protection delivered guidance in a preliminary judgment.
[2014] EWHC 25 (COP). CP (Sir James Munby PFD) 7/08/2014

O (A Child) (By Her Litigation Friend) v Doncaster Metropolitan Borough Council (2014): A 16-year-old girl who had been living with her paternal aunt was not a “looked-after child” for the purposes of the Children Act 1989 s.20 where arrangements for her care had been made by the family.

Family Law – Social Welfare – Local Government. [2014] EWHC 2309 (Admin). QBD (Admin) (Judge Clive Heaton QC) 9/07/2014

P (By his Litigation Friend the Official Solicitor) v Cheshire West & Chester Council & Anor : P & Q (By Their Litigation Friend The Official Solicitor) v Surrey CC (2014): The Supreme Court considered the criteria for determining whether the living arrangements made for a mentally incapacitated person amounted to a deprivation of liberty under the European Convention on Human Rights 1950 art.5.

[2014] UKSC 19. SC (Lord Neuberger PSC, Lady Hale DPSC, Lord Kerr JSC, Lord Clarke JSC, Lord Sumption JSC, Lord Carnwath JSC, Lord Hodge JSC) 19/03/2014

[2014] AC 896 : [2014] 2 WLR 642 : [2014] 2 All ER 585 : [2014] PTSR 460 : [2014] 2 FCR 71 : [2014] COPLR 313 : [2014] HRLR 13 : (2014) 17 CCL Rep 5 : [2014] Med LR 321 : (2014) 158(13) SJLB 37 : Times, April 1, 2014

An NHS Foundation Trust v (1) R (A Child) (2) R (3) R (2013). Health – Family Law
[2013] EWHC 2340 (Fam)
Fam Div (Peter Jackson J) 19/09/2013

[2014] 2 FLR 955 : [2014] Fam Law 294

Sandwell Metropolitan Borough Council v (1) RG (2) GG (3) SK (4) SKG (2013): Whilst a husband had, at the date of his marriage, lacked capacity to contract a marriage, it was not appropriate to direct the Official Solicitor to pursue a petition for nullity as annulment was not in the husband's best interests. However, he did lack capacity to consent to sexual relations and thus it was the local authority's duty, as his carers, to supervise as necessary regular contact between the husband and his wife.

[2013] EWHC 2373 (COP). CP (Holman J) 4/07/2013

(1) PC (By Her Litigation Friend The Official Solicitor) (2) NC (Appellants) v City of York Council (Respondent) (2013): A judge tasked with determining whether a woman with learning difficulties had sufficient capacity to decide whether to live with her husband upon his release from prison had taken the wrong approach. The couple had married after the husband had been convicted and sentenced for serious sexual offences. If, as the judge had found, the woman had had capacity to marry, she had to be taken to also have sufficient capacity to perform the terms of the marriage contract where there was no clear and cogent evidence to the contrary.

[2013] EWCA Civ 478. CA (Civ Div) (Richards LJ, McFarlane LJ, Lewison LJ) 1/05/2013. [2014] 2 WLR 1 : (2013) 16 CCL Rep 298 : [2013] Med LR 213 : [2014] Fam 10 : Times, June 25, 2013

A Local Authority v AK (By His Litigation Friend) & ORS (2012): A 56-year-old man who had brain damage had not had the capacity to decide to enter into marriage. The court suggested that the standard handbook provided to Registrars could be amended to incorporate reference to the need for mental capacity to contract a marriage.

CP (Bodey J) 30/11/2012. References: LTL 14/3/2013

CYC v (1) PC (2) NC (2012): A woman who lacked the mental capacity to decide whether to resume cohabitation with a husband convicted of serious sexual offences against former wives could resume cohabitation with him on his release from prison on licence. Despite the risks to her it was in her best interests, as the benefits significantly outweighed the detriments.

CP (Hedley J) 20/07/2012. [2013] Med LR 26

RE SK (2012): Where the care, accommodation, treatment and rehabilitation of a person who had suffered severe brain and physical injuries arose in the course of proceedings in both the Court of Protection and the High Court, it was not appropriate to deal with those matters in a single hearing because the two sets of proceedings had different objectives and tests.

[2012] EWHC 1990 (COP). CP (Bodey J) 9/07/2012 [2013] PIQR P4

RK (By Her Litigation Friend The Official Solicitor) v (1) BCC (2) YB (3) AK (2011): An adult, in the exercise of parental responsibility, could impose, or could authorise others to impose, restrictions on the liberty of his child. However, those restrictions were not to be such that, in their totality, they amounted to detention. Detention engaged the child's rights under the European Convention on Human Rights 1950 art.8, and a parent could not lawfully detain him or authorise his detention.

[2011] EWCA Civ 1305. CA (Civ Div) (Thorpe LJ, Gross LJ, Baron J) 30/11/2011. References: LTL 30/11/2011

SC v (1) BS (2) A Local Authority (2011): The expert psychiatrist appointed by the local authority and mother to determine whether the daughter lacked mental capacity would not be retained as his expertise on the issue of capacity under the Mental Capacity Act 2005 was open to very considerable

doubt.

Mental Health – Local Government. CP (Baker J) 7/10/2011. References: LTL 19/7/2012

P (By His Litigation Friend The Official Solicitor) v (1) Independent Print LTD (2) Council (3) PCT (4) AH (2011): A judge had not erred in granting a newspaper access to a Court of Protection hearing. Previous press interest in the case and the legitimate public interest in the court's powers amounted to a good reason why it should be permitted to attend, and the incapacitated person's rights under the European Convention on Human Rights 1950 art.8 did not outweigh the newspaper's rights under art.10.

Civil Procedure – Human Rights – Mental Health. [2011] EWCA Civ 756. CA (Civ Div) (Ward LJ, Carnwath LJ, Tomlinson LJ) 5/07/2011. [2012] 1 FLR 212 : [2012] 2 FCR 503 : [2011] MHLR 226 : [2011] Fam Law 1081

Cheshire West & Chester Council v (1) P (By His Litigation Friend the Official Solicitor) (2) M (2011): Whilst the restrictive measures that a local authority care home needed to employ to deal with the behaviour of a man who lacked capacity were in his best interests and therefore justifiable, they amounted to a deprivation of his liberty within the meaning of the European Convention on Human Rights 1950 art.5.

Mental Health – Local Government – Human Rights.

[2011] EWHC 1330 (Fam).CP (Baker J) 14/06/2011. References: LTL 4/7/2011

SMBC v (1) RG (2) GG (3) SK (4) SKG (2013): Application to discharge of party from proceedings. [2011] EWCOP B13. HH Judge Cardinal

D Borough Council v AB (2011): The test for whether a person had capacity to consent to sexual relations was whether the person had sufficient rudimentary knowledge of what the act comprised and of its sexual character to enable him or her to decide whether to give or withhold consent. That required understanding and awareness of the mechanics of the act; that there were health risks involved; and that sex between a man and a woman might result in the woman becoming pregnant.

[2011] EWHC 101 (Fam). CP (Mostyn J) 28/01/2011. [2011] 3 WLR 1257 : [2011] 3 All ER 435 : [2011] 2 FLR 72 : [2011] 3 FCR 62 : (2011) 14 CCL Rep 189 : [2011] Fam Law 472 : (2011) 161 NLJ 254 : [2012] Fam 36

The Council v (1) X (By Her Litigation Friend the Official Solicitor) (2) Y (3) Z (2010): The court declared that it was not in the best interests of a 94-year-old dementia sufferer for her to have direct contact with her daughter, the daughter's behaviour during contact being unhelpful and distressing. CP (King J) 9/11/2010. References: LTL 20/7/2011

RT v (1) LT (2) A Local Authority (2010): On the evidence a 23-year-old woman lacked the capacity under the Mental Capacity Act 2005 to decide where she should live and what contact she should have with members of her family.

Mental Health – Local Government. [2010] EWHC 1910 (Fam)

CP (Sir Nicholas Wall (President Fam)) 27/07/2010. References: LTL 28/7/2010 : [2011] 1 FLR 594 : (2010) 13 CCL Rep 580 : [2010] Fam Law 1283

A Local Authority v (1) Mrs A (By Helping her Litigation Friend the Official Solicitor) (2) Mr A (Supplemental Judgment (2010): It was not appropriate to adjourn a local authority's application to determine an individual's capacity to decide whether to use contraception, even where her husband had agreed to co-operate with other parties in the future, as the risk of that collaborative approach

continuing and producing nothing useful was too great to lose the advantage to the parties of having a decision.

[2010] EWHC 1550 (Fam). Fam Div (Bodey J) 24/06/2010. References: LTL 28/6/2010

A Local Authority v (1) A (By her Litigation Friend the Official Solicitor) (2) A (2010): When considering whether a patient with a learning disability had capacity to decide whether to use contraception, it was not appropriate to consider her understanding of what bringing up a child would be like, no opinion should be attempted as to how she would be likely to get on at it, and it should not be considered whether any child would be removed from her care. The court set out the appropriate test to be applied in such circumstances.

[2010] EWHC 1549 (Fam). CP (Bodey J) 24/06/2010

[2011] Fam 61 : [2011] 2 WLR 878 : [2011] PTSR 435 : [2011] 3 All ER 706 : [2011] 1 FLR 26 : [2011] 2 FCR 553 : (2010) 13 CCL Rep 536 : [2010] Fam Law 928

In the Matter of A sub nom A Local Authority (Claimant) v (1) A (By Her Guardian Judith Bennett-Hernandez) (2) B (Defendants) & Equality And Human Rights Commission (Intervener) – In the Matter of C sub nom A Local Authority (Applicant) v (1) C (By her Litigation Friend the Official Solicitor) (2) D (3) E (Respondents) & EQUALITY AND HUMAN RIGHTS COMMISSION

(Intervener) (2010): The court gave guidance on the scope of a local authority's positive obligations when it knew or ought to have known that a vulnerable child or adult was subject to restrictions on their liberty by a private individual, albeit for the purpose of their welfare and best interests, that arguably gave rise to a deprivation of liberty, contrary to the European Convention on Human Rights 1950 art.5.

[2010] EWHC 978 (Fam). Fam Div (Munby LJ) 4/05/2010. [2010] 2 FLR 1363 : (2010) 13 CCL Rep 404 : [2011] MHLR 258 : [2010] Fam Law 929

In the Matter of BJ (Incapacitated Adult) sub nom Salford City Council v BJ (By her Litigation Friend the Official Solicitor) (2009): Ongoing reviews of the continuing detention of persons lacking capacity could, where the facts of the case indicated that it was appropriate, be conducted on the papers, but with the safeguard that the parties would be entitled to request, and the judge to require, an oral hearing where appropriate.

[2009] EWHC 3310 (Fam). Fam Div (Munby J) 11/12/2009. [2010] 1 FLR 1373 : (2010) 13 CCL Rep 65 : [2010] MHLR 283 : [2010] Fam Law 242

RE MM (2009): A lengthy delay in obtaining a medical assessment of a care home resident's capacity to admit visitors, during which a visitor had been denied contact with her, had breached the visitor's rights under the European Convention on Human Rights 1950 art.8.

CP (Judge Moir) 4/11/2009. [2011] 1 FLR 712 : [2010] Fam Law 931

(1) A Primary Care Trust (2) P (By her Litigation Friend the Official Solicitor) v (1) AH (2) A Local Authority (2008): Balancing conflicting welfare considerations, it had been in the best interests of an adult male with severe epilepsy to have his condition assessed at a residential unit to which he and his mother consented, which would not have a bed available for up to a week, even though the medical evidence indicated that he needed an urgent assessment because of the risk to his health.

[2008] EWHC 1403 (Fam). CP (Sir Mark Potter (President)) 25/06/2008

[2008] 2 FLR 1196 : [2009] 1 FCR 567 : (2008) 11 CCL Rep 563 : [2010] MHLR 275 : [2008] Fam Law 996

In the Matter of (1) GJ (2) NJ (3) BJ (Incapacitated Adults) sub nom Salford City Council v (1) GJ (2) NJ (3) BJ (By their respective litigation friends) (2008): The court gave guidance on the

appropriate procedural safeguards to be adopted following an authorised placement of an incapacitated adult which involved the deprivation of his liberty.

[2008] EWHC 1097 (Fam). Fam Div (Manchester) (Munby J) 16/05/2008

[2008] 2 FLR 1295 : (2008) 11 CCL Rep 467 : [2008] MHLR 274 : [2008] Fam Law 997

RE MM (2007): A provision in a care plan in respect of a 39-year-old woman who lacked capacity to make her own decisions, which permitted her a minimum of four hours' unsupervised contact a week with her abusive partner, ensured that there was no infringement of her right to privacy under the European Convention on Human Rights 1950 art.8 by denying her the opportunity for a sexual relationship.

[2007] EWHC 2689 (Fam). Fam Div (Munby J) 16/11/2007. [2009] 1 FLR 487 : (2008) 11 CCL Rep 157

: [2008] Fam Law 212

Local Authority X v (1) MM (By her Litigation Friend the Official Solicitor) (2) KM (2007): Capacity to consent to sexual intercourse depended on a person having sufficient knowledge and understanding of the sexual nature and character of the act of sexual intercourse, and of the reasonably foreseeable consequences of sexual intercourse, to have the capacity to choose whether or not to engage in it, and the capacity to decide whether to give or withhold consent to sexual intercourse.

[2007] EWHC 2003 (Fam). Fam Div (Munby J) 21/08/2007. [2009] 1 FLR 443 : [2008] 3 FCR 788 :

(2008) 11 CCL Rep 119 : [2008] Fam Law 213

City of Sunderland v (1) PS (By her litigation friend the Official Solicitor) (2) CA (2007): The court had the power under the inherent jurisdiction to appoint a receiver in respect of an incapacitated adult's financial affairs, and to make an order enabling a local authority to use reasonable measures to prevent such a person from being removed from a care unit where he was residing.

[2007] EWHC 623 (Fam). Fam Div (Munby J) 9/03/2007. [2007] 2 FLR 1083 : (2007) 10 CCL Rep 295 :

[2007] LS Law Medical 507: [2007] Fam Law 695

M v B and A (2005): Capacity to marry, jurisdiction of the court to make injunctions.

[2005] EWHC 1681 (Fam); [2006] 1 FLR 115. Fam Div Sumner J

Re G: Inherent jurisdiction and fluctuating capacity, power of the court to make orders to ensure protective framework remains in place.

Bennett J 14/10/2005

Catastrophic Injury

Joseph has a formidable reputation as a personal injury specialist. He has over 25 years' experience of this field. He covers the broad range of personal injury work (employers' liability, road traffic accident, occupiers' liability and sporting accident and claims which arise of death) but his focus is on complex cases, catastrophic injury and issues of causation. He has represented both claimants and defendants in cases where the value of the claim has been over £1M.

Joseph is a well known specialist on limitation, especially in the context of capacity issues.

In addition, Joseph is instructed by claimants and defendants in relation to the issue of statutory provision of care services and claims for compensation.

Solicitors find Joseph approachable and willing to work as a team. He is noted for his ability to be sympathetic to clients.

Cases

Stephen Cain v Bernice Francis: Shona McKay v (1) Stephen Hamlani (2) Direct Line Insurance PLC (2008): In exercising the discretion under the Limitation Act 1980 s.33 to disapply the time limits for commencing proceedings, the loss to the defendant of a limitation defence was not to be regarded as a head of prejudice. The question to be asked was whether it was fair and just in all the circumstances to expect the defendant to meet the claim on the merits, notwithstanding the delay in commencement.

[2008] EWCA Civ 1451. CA (Civ Div) (Sir Andrew Morritt (Chancellor), Smith LJ, Maurice Kay LJ) 18/12/2008. [2009] 3 WLR 551 : [2009] 2 All ER 579 : [2009] CP Rep 19 : [2009] RTR 18 : [2009] LS Law Medical 82 : (2009) 106(2) LSG 20 : [2009] QB 754

Karina Rees v Darlington Memorial Hospital NHS Trust (2002): A disabled mother who gave birth to a healthy child after a negligently-performed sterilisation was entitled to recover the extra costs of child care occasioned by her disability. Leave to appeal to the House of Lords granted.

[2002] EWCA Civ 88. CA (Civ Div) (Waller LJ, Robert Walker LJ, Hale LJ) 14/02/2002. [2003] QB 20 : [2002] 2 WLR 1483 : [2002] 2 All ER 177 : [2002] 1 FLR 799 : [2002] 1 FCR 695 : [2002] PIQR P26 : [2002] Lloyd's Rep Med 163 : (2002) 65 BMLR 117 : [2002] Fam Law 348 : (2002) 99(12) LSG 32 : (2002) 152 NLJ 281 : (2002) 146 SJLB 53 : Times, February 20, 2002 : Independent, February 19, 2002

Clinical Negligence

Joseph is instructed predominately for claimants for claims resulting from wrongful birth, injury at birth, failure to diagnose cancer and failures during surgery. He is also instructed in cases where there has been a failure to properly treat mental health with catastrophic consequences.

Joseph is involved in a good number of high value claims.

Cases

Karina Rees v Darlington Memorial Hospital NHS Trust (2002): A disabled mother who gave birth to a healthy child after a negligently-performed sterilisation was entitled to recover the extra costs of child care occasioned by her disability. * Leave to appeal to the House of Lords granted.

[2002] EWCA Civ 88. CA (Civ Div) (Waller LJ, Robert Walker LJ, Hale LJ) 14/02/2002
[2003] QB 20 : [2002] 2 WLR 1483 : [2002] 2 All ER 177 : [2002] 1 FLR 799 : [2002] 1 FCR 695 : [2002] PIQR P26 : [2002] Lloyd's Rep Med 163 : (2002) 65 BMLR 117 : [2002] Fam Law 348 : (2002) 99(12) LSG 32 : (2002) 152 NLJ 281 : (2002) 146 SJLB 53 : Times, February 20, 2002 : Independent, February 19, 2002

Public / Administrative

Joseph practises in a number of discrete areas of judicial review and public law including education, mental health, community care, provision of services to children, inquests and

commissioning/procurement decisions of public authorities.

In addition Joseph has vast experience in dealing with claims under the Human Rights Act 1998 particularly in relation to claims under Articles 2,3,5,6 and 8.

Cases

O (A Child) (By Her Litigation Friend) v Doncaster Metropolitan Borough Council (2014): A 16-year-old girl who had been living with her paternal aunt was not a “looked-after child” for the purposes of the Children Act 1989 s.20 where arrangements for her care had been made by the family. [2014] EWHC 2309 (Admin). QBD (Admin) (Judge Clive Heaton QC) 9/07/2014

DM (Claimant) v Doncaster Metropolitan Borough Council (Defendant) v Secretary of State for Health (Interested party) (2011): A local authority was entitled to charge a person for his accommodation in a care home while he was detained there under the Mental Capacity Act 2005. [2011] EWHC 3652 (Admin). QBD (Admin) (Langstaff J) 16/12/2011. (2012) 15 CCL Rep 128 : [2012] MHLR 120 : [2012] ACD 36

R V Criminal Injuries Compensation Board (Respondent), Ex Parte Wayne Joseph Mardsen (Applicant) (1999): The wording of para.11 of the Criminal Injuries Compensation Scheme 1990 was clear and unambiguous such that a purposive approach to its construction was not required. In the circumstances of this case, where the victim had not been run down deliberately, he was not entitled to compensation. CA (Civ Div) (Clarke LJ, Auld LJ, Morritt LJ) 23/03/1999. [2000] RTR 21 : [1999] PIQR Q195

Inquests

Joseph has been instructed in a number of high profile inquests including the death of an elderly lady who suffered a fatal head injury when her wheelchair rolled from the back of an ambulance, the death of a man who was killed in an explosion caused by vapour from gas which accumulated in the van he was driving, the death of a lady who died in hospital as a result of multiple failures in her treatment, the death of a cancer patient where the condition had been missed by her GP and the death of a patient in a care home.

He has particular expertise in relation to inquests involving residents at care home and hospitals who are deprived of their liberty under schedule A1 of the Mental Capacity Act 2005.

Joseph chaired the ‘Investigation into the Care and Treatment of RD (2013)’ the findings and recommendations receiving widespread national media coverage.

Employment

Joseph has particular expertise in claims for unfair dismissal in the education and care/health sectors and claims brought under the Equalities Act 2010.

Joseph is well known for his advice and representation in claims brought for “whistle blowing” particularly in the education and care/health sectors.

Disease