

Case Summary

Re NRA & Ors [\[2015\] EWCOP 59 \(Charles J\)](#)

Issue

Article 5 ECHR – Deprivation of liberty

Facts

Re NRA is the latest instalment in the *Re X* saga, in which the Court of Protection attempts to deal with the fallout from the judgment of the Supreme Court in *Cheshire West and Chester Council v P and another (Same intervening)* [2014] UKSC 19 [2014] AC 896 (“Cheshire West”). In *Re X* [2014] EWCOP 25, Sir James Munby, the President of the Family Division, developed a streamlined paper procedure for non-controversial deprivation of liberty applications, to deal with the expected increase in such applications following *Cheshire West*. On appeal, the Court of Appeal decided that the President’s conclusion were, for technical reasons, a procedural nullity and therefore of no effect. In any event, each judge of the Court of Appeal considered that P did need to be a party.

The court in *Re NRA* was faced with the need to devise a system which was compliant with Article 5 but not so onerous that it diverted resources away from frontline services, caused unnecessary interference in the lives of P and those who care for P, or resulted in excessive delay.

Decision

The court reached the following key conclusions:

1. The streamlined “*Re X*” procedure devised by Sir James Munby should be reintroduced, subject to a number of improvements to the forms aimed at drawing more information from social services authorities at the outset;
2. Family members, in particular family members that have been devoted to caring for P for years, are generally to be trusted by the Court as capable of advocating for P’s best interests;
3. In the large number of cases in which there is every reason to trust the judgment of family members, P need not be joined as a party to proceedings;
4. In practice, it may be preferable to family members to be formally appointed as representatives under the new COPR rule 3A;
5. Where there is no suitable family member to consult then the court should fill the deficit itself by taking on a more inquisitorial role, principally through the increased use of s. 49 reports and witness summonses.

Practice implications

We suggest that practitioners continue to make applications for orders authorising deprivation of liberty outside care homes and hospitals using the COP DOL 10 form, but that an accompanying witness statement should also address the questions above. Second, practitioners should take steps to identify, where possible, a family member or friend who would be in a position to fulfil the representative and review roles. Ideally, a statement from the family member or friend should be submitted with the application which would potentially enable the court to make the order authorising the arrangements on the first occasion that the judge has to consider the papers.

The full version of this case report can be found [here](#). Further reports, articles and guidance notes can be found on our dedicated Mental Capacity Law Resources Page by [clicking here](#).