

# 1GC | Family Law

## Malcolm Chisholm

Year of Call: 1989



## Practice Overview

Malcolm's principal focus is on complex Court of Protection work and care proceedings. He is regularly instructed by local authorities, by parents, by Children's Guardians, and by the Official Solicitor.

In the Court of Protection he concentrates on health and welfare cases with a particular interest in medical treatment disputes including proposed withdrawal of treatment. In late 2016 and again in early 2017 he acted for the Welsh Health Board in *Abertawe Bro Morgannwg University Local Health Board v RY (by his litigation friend the Official Solicitor) and CP* [2017] EW COP 2.

In November 2016 Malcolm acted for the Children's Guardian in *A Local Authority v D, E and C (A Child)* [2016] EWHC 3473 (Fam) – a case brought under the inherent jurisdiction in which Mr Justice Keehan accepted Malcolm's submission that a 15-year-old Gillick-competent child could consent to the deprivation of his own liberty.

His care proceedings involve serious allegations of non-accidental injury.

Malcolm also undertakes the full range of private law children work including applications to remove children from the jurisdiction, as well as disputes concerning Child Arrangements orders (formerly 'residence' and 'contact' orders) where his expertise in care proceedings is invaluable.

He has a particular interest in the highly complex interface between the Mental Capacity Act 2005 and the Mental Health Act 1983, and has been a part-time Tribunal Judge of the First-Tier Tribunal (Mental Health) since 2003. He is frequently instructed in challenges to deprivation of liberty under s. 21A MCA 2005 at regional centres of the Court of Protection throughout England and Wales.

Malcolm is licensed to undertake Direct Access work.

## Children (public law)

## Children (private law)

## Court of Protection

## Domestic violence & injunctions

## International family law

### What the directories say

**2018/19:** 'He is excellent with lay clients.' **Legal 500**

*"A very experienced senior junior who is extremely good with clients and very strong in cross-examination." "Malcolm is a very well-prepared barrister with a canny degree of foresight as to the issues that need to be grappled with and how these are likely to play out in front of any particular judge. His advocacy is at a level that surpasses his junior status." Chambers UK*

**2017:** *"Leading senior junior who is best known for his work for local authorities and for parents. Praised in the market for his client-handling skills, he is an expert on cases concerning the overlap between the Mental Health Act and the Mental Capacity Act. He's well respected, logical and excellent with vulnerable clients. His cross-examination is impressive".*

**2016:** *"He is a real pleasure to work with and makes everyone feel at ease. He has the ability to take the emotional charge out of situations and make people feel they are working towards a common goal, which is invaluable. He is meticulous in his preparation and provides clear written and oral advice. He is able to get to grips with the issues at great speed."*

**2015:** *"He has a sensitive manner with family members and is also realistic and sensible in his advice. He pursues cases with vigour and enthusiasm. He has an almost fatherly oversight when handling cases. He really steadies the ship and calms everything down".*

**2014:** *"He is a polished advocate who offers confidence without aggression. He knows the law and also how to approach a case tactically".*

**2013:** *"Trusted and tenacious"*

### Notable Cases

#### ***Abertawe Bro Morgannwg University Local Health Board v RY* [2017] EWCOP 2**

Withdrawal of treatment - emphasising the difficulty faced by courts when P's purported wishes and feelings are obscured by unreliable evidence from family members. Malcolm acted for the Health Board.

#### ***A Local Authority v D, E, and C (A Child)* [2016] EWHC 3473 (Fam)**

Deprivation of liberty of a Gillick-competent 15-year-old child.

#### ***An NHS Trust v AB (A Child) and Others* [2016] EWCA Civ 899**

Court of Appeal refused parents' appeal against refusal of High Court Judge to escalate treatment for a severely brain-injured child. Malcolm acted for CAF/CASS Legal .

***Re X (A Child) [2015] EWHC 2778 (Fam); [2015] EWCA Civ 1159***

Court of Appeal: withdrawal of treatment from a seriously ill 11-year-old child. Malcolm acted for CAFCASS Legal.

***X v (1) A Local Authority (2) NHS Trust [2014] EWCOP 29***

Malcolm successfully argued that a retired lawyer suffering from Korsakoff's psychosis nevertheless had capacity to make decisions regarding his residence and care needs.

***RC v CC & X Local Authority [2014] EWHC 131 (COP)***

The correct approach to be taken when a party seeks to withhold disclosure of documents in the Court of Protection. Malcolm acted for the Official Solicitor.

***Re Z (Adoption: Scottish Child Placed in England: Convention Compliance) [2012] EWHC 2404 (Fam)***

Malcolm acted for the adopter in proceedings where adoption unsuccessfully opposed by birth parents on the grounds that the Scottish legal procedure leading to the placement of the child in England breached their rights under Arts 6 & 8.

***Re W (Adoption Order: Set Aside and Leave to Oppose) [2011] 1 FLR 2153, CA***

Malcolm successfully acted for the adopter – the Court of Appeal gave guidance for courts faced with a late application to oppose adoption.

***X County Council v B (Abduction: Rights of Custody in the Court) [2010] 1 FLR 1197***

The court can itself be seized of custody rights when dealing with an application involving child's place of residence.

***Re A (A Child) (Adoption: Removal) [2009] 2 FLR 597, CA***

Placement of children overseas for purposes of adoption.

***Re T (Care Order) [2009] 2 FLR 574, CA***

Court's duties when presented with a proposed agreed order in care proceedings.

***X & Y v A Local Authority (Adoption: Procedure) [2009] 2 FLR 984, FD***

Wholesale breach of adoption rules in FPC.

***Re LM (Reporting Restrictions: Coroner's Inquest) [2008] 1 FLR 1360, FD***

Restrictions on publicity/Art 8/Art 10.

***Greenwich London Borough Council v S [2007] 2 FLR 154, FD***

Convention adoption order/habitual residence.

***Re B (Abduction: False Immigration Information) [2000] 2 FLR 835, FD?***

The approach to be taken by the court when alerted to deception of a public body.

***Re P (Parental Responsibility) [1998] 2 FLR 96, CA***

Court's refusal to make a parental responsibility order where the father's commitment to the child was not in question, but his motive in applying was to undermine the mother's care of the child.

## Education

MA (Cantab)

## Appointments

2003 Tribunal Judge, Mental Health Tribunal

## Memberships & Associations

[Family Law Bar Association](#)

[Association of Lawyers for Children](#)

[Court of Protection Bar Association](#)

Seminars and Lectures

Malcolm lectures at a number of of the annual practitioners' conferences including those organised by Jordans and Butterworths, and has recorded podcasts for lawyers. He also gives lectures at Chambers seminars.

Malcolm lectures at a number of of the annual practitioners' conferences including those organised by Jordans, Butterworths and Simon Gore Events, and has recorded podcasts for lawyers.

He tweets at [@chisbarrister](#)

Personal

Married, 3 children