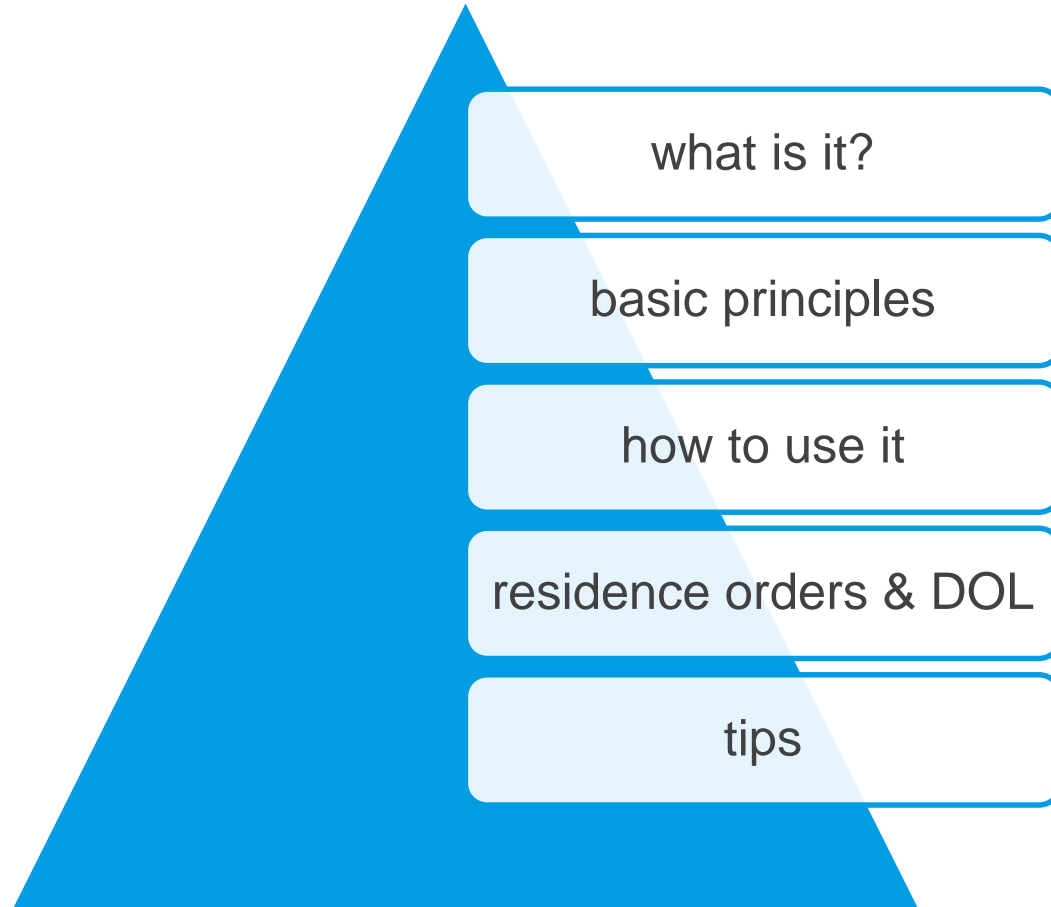


Inherent jurisdiction Jonathan Auburn



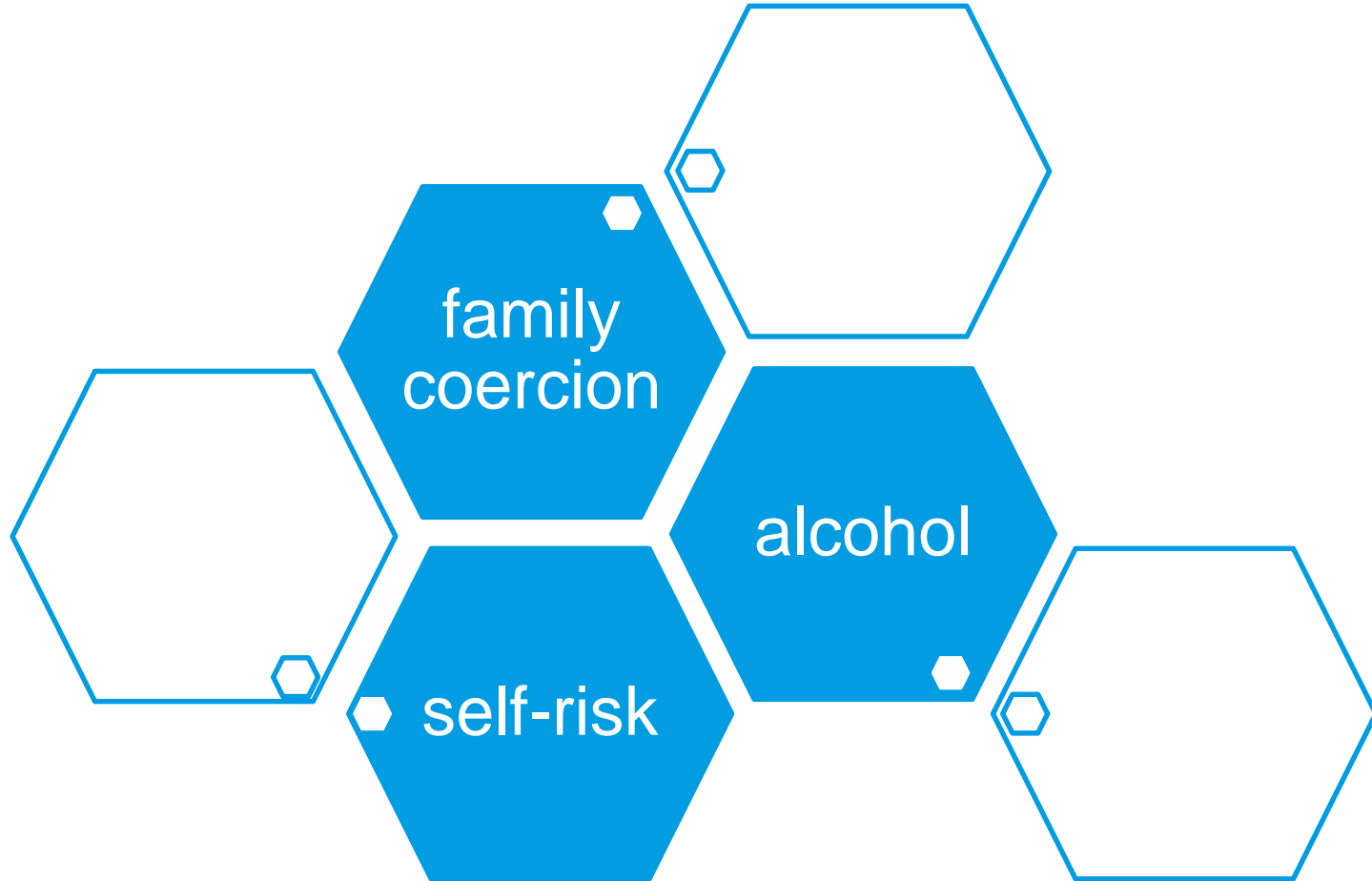
What is inherent jurisdiction?

- High Court's jurisdiction to protect 'incompetent' and also 'vulnerable' adults
- where P has capacity, so cannot use MCA
- jurisdiction survives MCA: *DL v A LA* [2012] EWCA Civ 253
- can only be exercised by the High Court, not COP

Munby J, *Re SA (Vulnerable Adult with Capacity: Marriage)* [2005] EWHC 2942 (Fam), at 76-83:

- jurisdiction over those who, if not incapacitated, are reasonably believed to be –
 - (i) under **constraint**, or
 - (ii) subject to **coercion or undue influence**, or
 - (iii) **other disabling circumstance**: some other reason deprived of capacity to make relevant decision, disabled from making a free choice, or incapacitated or disabled from giving or expressing a real and genuine consent

- another good description: McFarlane LJ in *A Local Authority v DL & Ors* [2012] EWCA Civ 253 at paras 54, 62



what is it

basic principles

how to use it

residence orders & DOL

tips

- test for engaging inherent jurisdiction: whether the proposed intervention is **necessary** and **proportionate** - *A Local Authority v DL & Ors* [2012] EWCA Civ 253, paras 66, 76
- Court will first seek to use inherent jurisdiction to facilitate unencumbered decision-making, rather than taking decision for the adult: *LBL v RYJ and VJ* [2010] EWHC 2665 (COP)
“facilitative, rather than dictatorial, approach of the court”;

- *A Local Authority v DL & Ors* [2012] EWCA Civ 253 at para 68 *per* McFarlane LJ: inherent jurisdiction is **not limited solely to** affording a vulnerable adult a temporary **'safe space'** within which to make a decision free from any alleged source of undue influence. Court may in appropriate cases impose long-term injunctive relief to protect the vulnerable adult

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documents

- Part 8 claim form
- detailed particulars (like a skeleton, i.e. facts, law, submissions)
- draft Order
- witness statement
- source docs

what to show

- foundation of court's jurisdiction, i.e. coercion, undue influence, other disabling influence
- intervention is necessary
- intervention is proportionate; inc alternative options considered

process

- file in Family Division of High Court
- do you need to begin without notice to those alleged to be controlling P?
- urgency needed?
- if no need for urgency, may start with directions
- interim measures: *Munby, Re SA*, para 80
- fact-finding?

- what to do if capacity uncertain at outset?
 - options:
 - [1] commence in HC & explain why
 - [2] commence in COP & transfer if needed
- If urgent action needed: usually safest to start in the HC

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- e.g. order removing from home; DOL
- some authority for DOL: *A NHS Trust v A* [2013] EWHC 2442 (Fam), paras 94, 96; *NCC v PB* [2014] EWCOP 14, paras 109-121; order in *Re PS (An Adult)* [2007] EWHC 623
- authorities against

-
- Mazhar v Lord Chancellor [2017] EWHC 2536 (Fam): emergency hospital admission as NHS could not secure staffing for a vulnerable home-care patient over the weekend; issue raised but not decided
 - Lord Chancellor essentially conceded that cannot authorise a DOL under inherent jurisdiction unless P of unsound mind for A5 purposes
 - Claimant contended can never authorise DOL under inherent jurisdiction as is merely facilitative; that is wrong
 - Claimant seeking permission to appeal

- evidence: multiple sources, beyond LA officers
- compare presentation when away from source of suspected coercion
- is fact-finding really necessary?
- form of order – requires great precision