



Welcome to the October 2023 Mental Capacity Report, which is much shorter than last month's blockbuster (to everyone's relief). Highlights this month include:

- (1) In the Health, Welfare and Deprivation of Liberty Report: Brain stem death before the courts and conveyancing;
- (2) In the Property and Affairs Report: the Powers of Attorney Act 2023 gets Royal Assent, and how it will change the Mental Capacity Act 2005;
- (3) In the Practice and Procedure Report: revised guidance for Accredited Legal Representatives and anonymisation of clinicians in cases involving the MCA 2005;
- (4) In the Wider Context Report: a revised online ADRT service and a revised clinical guide for staff working with autistic people and those with a learning disability, and our Irish correspondents highlight two specific aspects of the Assisted Decision-Making (Capacity) Act 2015;
- (5) In the Scotland Report: attorneys as executors.

You can find our past issues, our case summaries, and more on our dedicated sub-site [here](#), where you can also sign up to the Mental Capacity Report.

#### Editors

Alex Ruck Keene KC (Hon)  
Victoria Butler-Cole KC  
Neil Allen  
Nicola Kohn  
Katie Scott  
Arianna Kelly  
Nyasha Weinberg  
Simon Edwards (P&A)

#### Scottish Contributors

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Jill Stavert

The picture at the top, "Colourful," is by Geoffrey Files, a young autistic man. We are very grateful to him and his family for permission to use his artwork.

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### Powers of Attorney Act 2023

Royal Assent was granted on 18 September 2023 to the Powers of Attorney Bill – now the Powers of Attorney Act 2023. When it comes into force (at a date yet to be set), it will make a number of substantial changes to – in particular – the procedure for making Lasting Powers of Attorney in England & Wales when it comes into force (the precise date for this is not yet known).

Despite the helpful Explanatory Notes, the Bill is not an easy piece of legislation to read on a standalone basis. Alex has prepared an entirely unofficial version of Schedule 1 to the Mental Capacity Act 2005 (providing for formalities relating to LPAs) as it will stand in due course.

For more details of the changes that it will make, and a walkthrough of the Act (recorded at an earlier stage of its life as a Bill, but in the same form, as no amendments were made as it went through Parliament), see Alex’s website [here](#).

### Law Commission Wills project

The Law Commission is relaunching its project on reforming the laws of wills. Following a consultation in 2017, the Commission paused completion of the project to undertake a review of the law concerning weddings/ The Commission has now re-started the wills project and aims to publish a supplementary consultation paper on 5 October 2023. Many will recall that the Law Commission proposed replacing the common test for testamentary

capacity contained in *Banks v Goodfellow* with the statutory test contained in the MCA 2005, a step with which we would entirely agree.

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Alex has been in cases involving the MCA 2005 at all levels up to and including the Supreme Court. He also writes extensively, has numerous academic affiliations, including as Visiting Professor at King's College London, and created the website [www.mentalcapacitylawandpolicy.org.uk](http://www.mentalcapacitylawandpolicy.org.uk). To view full CV click [here](#).



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Neil has particular interests in ECHR/CRPD human rights, mental health and incapacity law and mainly practises in the Court of Protection and Upper Tribunal. Also a Senior Lecturer at Manchester University and Clinical Lead of its Legal Advice Centre, he teaches students in these fields, and trains health, social care and legal professionals. When time permits, Neil publishes in academic books and journals and created the website [www.lpslaw.co.uk](http://www.lpslaw.co.uk). To view full CV click [here](#).



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Arianna practices in mental capacity, community care, mental health law and inquests. Arianna acts in a range of Court of Protection matters including welfare, property and affairs, serious medical treatment and in inherent jurisdiction matters. Arianna works extensively in the field of community care. She is a contributor to Court of Protection Practice (LexisNexis). To view a full CV, click [here](#).



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Nicola appears regularly in the Court of Protection in health and welfare matters. She is frequently instructed by the Official Solicitor as well as by local authorities, CCGs and care homes. She is a contributor to the 5<sup>th</sup> edition of the *Assessment of Mental Capacity: A Practical Guide for Doctors and Lawyers* (BMA/Law Society 2022). To view full CV click [here](#).



**Katie Scott:** [katie.scott@39essex.com](mailto:katie.scott@39essex.com)

Katie advises and represents clients in all things health related, from personal injury and clinical negligence, to community care, mental health and healthcare regulation. The main focus of her practice however is in the Court of Protection where she has a particular interest in the health and welfare of incapacitated adults. She is also a qualified mediator, mediating legal and community disputes. To view full CV click [here](#).



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Nyasha has a practice across public and private law, has appeared in the Court of Protection and has a particular interest in health and human rights issues. To view a full CV, click [here](#)



**Simon Edwards:** [simon.edwards@39essex.com](mailto:simon.edwards@39essex.com)

Simon has wide experience of private client work raising capacity issues, including *Day v Harris & Ors* [2013] 3 WLR 1560, centred on the question whether Sir Malcolm Arnold had given manuscripts of his compositions to his children when in a desperate state or later when he was a patient of the Court of Protection. He has also acted in many cases where deputies or attorneys have misused P's assets. To view full CV click [here](#).



**Adrian Ward:** [adrian@adward.co.uk](mailto:adrian@adward.co.uk)

Adrian is a recognised national and international expert in adult incapacity law. He has been continuously involved in law reform processes. His books include the current standard Scottish texts on the subject. His awards include an MBE for services to the mentally handicapped in Scotland; honorary membership of the Law Society of Scotland; national awards for legal journalism, legal charitable work and legal scholarship; and the lifetime achievement award at the 2014 Scottish Legal Awards.

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Jill Stavert is Professor of Law, Director of the Centre for Mental Health and Capacity Law and Director of Research, The Business School, Edinburgh Napier University. Jill is also a member of the Law Society for Scotland's Mental Health and Disability Sub-Committee. She has undertaken work for the Mental Welfare Commission for Scotland (including its 2015 updated guidance on Deprivation of Liberty). To view full CV click [here](#).

## Conferences

Members of the Court of Protection team regularly present at seminars and webinars arranged both by Chambers and by others.

Alex is leading a masterclass on approaching complex capacity assessment with Dr Gareth Owen in London on 1 November 2023 as part of the Maudsley Learning programme of events. For more details, and to book see [here](#).

Alex is also doing a regular series of 'shedinars,' including capacity fundamentals and 'in conversation with' those who can bring light to bear upon capacity in practice. They can be found on his [website](#).

### **Advertising conferences and training events**

If you would like your conference or training event to be included in this section in a subsequent issue, please contact one of the editors. Save for those conferences or training events that are run by non-profit bodies, we would invite a donation of £200 to be made to the dementia charity [My Life Films](#) in return for postings for English and Welsh events. For Scottish events, we are inviting donations to Alzheimer Scotland Action on Dementia.

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Our next edition will be out in November. Please email us with any judgments or other news items which you think should be included. If you do not wish to receive this Report in the future please contact: [marketing@39essex.com](mailto:marketing@39essex.com).

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