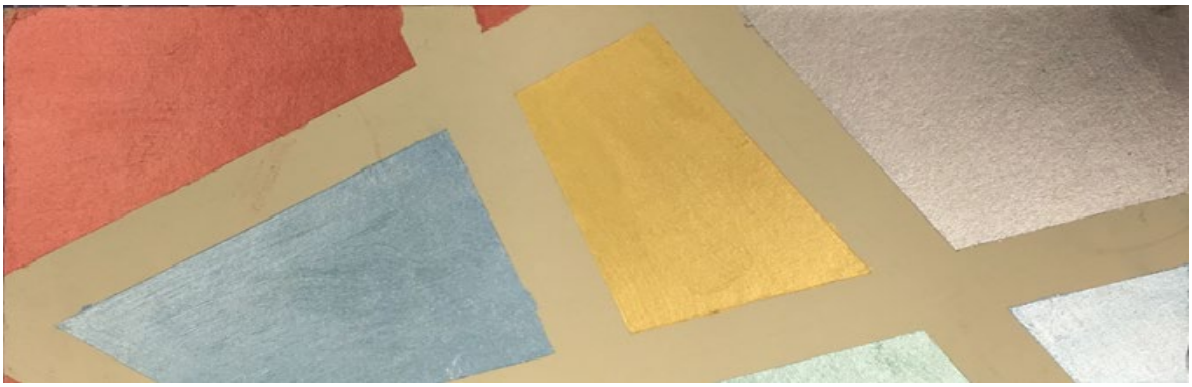
Essex CHAMBERS

MENTAL CAPACITY REPORT: COMPENDIUM

May 2025 | Issue 150



Welcome to the May 2025 Mental Capacity Report. It is our 150th issue, and, to mark this, Tor and Alex have recorded a discussion reflecting on how the report (then the newsletter) came to be back in 2010, and on how the law and practice have evolved since then. The first issue of the newsletter they discuss can be found here.

Highlights:

(1) In the Health, Welfare and Deprivation of Liberty Report: new and updated guidance notes;

(2) In the Practice and Procedure Report: naming clinicians (and other professionals), and cross-border deprivation of liberty;

(3) Section 63 MHA 1983 and diabetes, and the Mental Health Bill progresses to the Commons;

(4) In the Children's Capacity Report: the Court of Appeal explains why local authorities cannot consent to the confinement of children in their care;

(5) In the Wider Context Report: the other party's interest in litigation capacity, how far landlords are supposed to go in hoarding cases, and a new Convention on the rights of older adults on the cards?

(6) In the Scotland Report: AWI reform update and cross-border deprivation of liberty – Scottish reflections what is appealable in the AWI context.

As there were no developments meriting specific reporting in the property and affairs field this month, we do not have a Property and Affairs report.

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

Scottish Contributors
Adrian Ward
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.

Contents

HEALTH, WELFARE AND DEPRIVATION OF LIBERTY 2
Guidance notes 2
PRACTICE AND PROCEDURE 3
Short note: Serious medical treatment cases and naming clinicians – the Supreme Court decides 3
Cross-border capacity 7
Cross-border deprivation of liberty 8
Short note: taking intermediaries seriously 10
MENTAL HEALTH MATTERS 13
Diabetes and section 63 MHA 1983 13
Mental Health Bill progress 14
Calocane inquiry chair named 14
Parliamentary Office of Science and Technology notes 15
CHILDREN'S CAPACITY 16
The Court of Appeal explains why local authorities cannot consent to the confinement of children in their care 16
Disclosure of information between Coroners and the Family Court 16
Paying the price of failure 18
THE WIDER CONTEXT 22
Terminally Ill Adults (End of Life) Bill update 22
Independent commission into adult social care 22
Short note: what interest does a defendant have in determining a claimant's litigation capacity? 22
Short note: hoarding, capacity and the limits of the landlord's obligations 23
The human rights of older persons 25
SCOTLAND 26
AWI law reform – the latest 26
Another SGO unfit for recognition 27
Assisted Dying for Terminally Ill Adults (Scotland) Bill 32
Scottish Commission for People with Learning Disabilities (SCLD) 32
Centre for Mental Health Practice Policy and Law Research (Edinburgh Napier University) updates 32

HEALTH, WELFARE AND DEPRIVATION OF LIBERTY

Guidance notes

Unusually, there have been no cases determined by the Court of Protection in the past month requiring reporting in this section. However, to mark the 150th issue, we have produced a guidance note on 'equivalent assessments' for DoLS purposes, and updated our guidance notes on assessing and determining capacity, and assessing and determining best interests. All of them can be found in the guidance notes section of our website here.

PRACTICE AND PROCEDURE

Short note: Serious medical treatment cases and naming clinicians – the Supreme Court decides

In the conjoined appeals of *Abbasi* and *Haastrup* [2025] UKSC 15, the Supreme Court has grappled with the questions of (1) the jurisdiction of the High Court to grant orders providing for the anonymity of professionals involved in treating children involved in serious medical treatment cases; and (2) the circumstances under which such orders should continue after the death of the child. Whilst the decisions under challenge in the two cases related to proceedings relating to children, the same broad principles apply in relation to proceedings before the Court of Protection in respect of adults unable to make their own decisions about medical treatment.

Lords Reed and Briggs gave the lead judgment (Lords Hodge and Stephens agreeing with them); Lord Sales gave a concurring judgment.

As a terminological point, Lords Reed and Briggs noted at paragraph 51 that, although conventionally the orders in questions have been called "reporting restrictions orders," the injunctions in question:

> *are wider in scope than reporting restriction orders as ordinarily understood, which restrict the reporting of court proceedings (for example, by prohibiting the publication of the name of a witness). They are also different in that they are made in proceedings that are usually held in private. In other words, unlike reporting restriction orders, they do not necessarily make inroads upon the open justice principle* […]. *For all these reasons, it appears to us to be confusing and potentially misleading to describe these injunctions as reporting restriction orders.*

Lords Reed and Briggs noted at paragraph 7 that resolution of the issues that arose had led the court "*into the need to review from first principles the practice of the making and continuation of injunctions of this kind*." Having conducted that review, they ultimately dismissed the appeal, but for rather different reasons to that of the Court of Appeal. Helpfully, they summarised their reasons at paragraph 182 thus:

> *(1) The High Court has jurisdiction, in proceedings concerned with the withdrawal of life-sustaining treatment of children, to grant injunctions protecting the identities of clinicians and other hospital staff involved in that treatment, where and for so long as that is necessary to protect the interests of those children. That jurisdiction arises under the court's inherent parens patriae powers, and under its inherent jurisdiction to protect the administration of justice. Such injunctions can be granted against parties who will not themselves act wrongfully, where that is necessary in order to protect the children's interests or the administration of justice, and they can be granted contra mundum.*
>
> *(2) The High Court also has jurisdiction to issue such injunctions where that is necessary in order to prevent interference with hospital trusts' performance of their statutory functions, as explained in Broadmoor.*
>
> *(3) The High Court also has jurisdiction to issue such injunctions where that is necessary in order to protect the rights of clinicians and other hospital staff, in proceedings brought or continued by those individuals in reliance on their rights. In principle, such proceedings can (in an appropriate case) be brought in a representative capacity.*
>
> *(4) These grounds of jurisdiction are not mutually exclusive. In particular, the*

need to protect the interests of the children, to secure the administration of justice, and to prevent interference with the trusts' performance of their functions are likely to co-exist and to be mutually reinforcing.

(5) Such injunctions are not incompatible with the open justice principle where, as in the Haastrup proceedings, the application is made under the parens patriae jurisdiction and the substantive hearing is held in private. It is also possible to avoid any incompatibility with the open justice principle where the hearing is held in public, as was intended in the Abbasi proceedings.

(6) Applications for such injunctions should be based on the relevant cause of action under domestic law (such as the parens patriae jurisdiction, or the Broadmoor principle, or the rights of the clinicians under the law of tort), rather than simply on section 6(1) of the Human Rights Act and section 37(1) of the Senior Courts Act.

(7) In principle, the powers of the High Court under the latter provisions are wide enough to enable it to issue injunctions to protect the Convention rights of clinicians and other hospital staff in proceedings brought by hospital trusts, if that is the only way in which those rights can receive practical and effective protection. However, those circumstances do not exist where such protection can be afforded under parens patriae powers or under the court's power to protect the administration of justice, or on the basis explained in Broadmoor, or where it is practical for the clinicians (or a representative) to be joined to the proceedings and to assert their own claim.

(8) Notice of an application for such an injunction should be given to media organisations. Notice of the grant of such an injunction, and of any application to vary or discharge such an injunction, should be given to the clinicians affected.

(9) In deciding whether to grant such injunctions at the outset of such proceedings, where the court is being asked to exercise its parens patriae powers, the interests of the child in question, and the need to secure the administration of justice in the proceedings, are likely to justify making an order in circumstances where there is a significant risk that publicity will result in interferences with the child's right to confidentiality and privacy, and in damage to the continued care being provided by the hospital. An order is also likely to be justified under the Broadmoor principle, and, where the clinicians (or a representative clinician) are joined, in order to protect the rights of the clinicians.

(10) Such injunctions should be of limited duration. A reasonable duration would be until the end of the proceedings and, in the event that they terminate with the child's death or the grant of the declaration sought, for a subsequent cooling-off period. The length of that period will reflect the court's assessment of the continued risk of interference with the trust's performance of its statutory functions, and in particular with its continuing treatment of other patients, and the time reasonably needed for clinicians to take advice about their personal rights, but is likely to be measured in weeks rather than months or years.

(11) The individuals whose identities are protected by such injunctions should be identifiable by reference to the court's order.

(12) Such injunctions, being contra mundum, should include liberty to any person affected by their terms to apply on notice to vary or discharge any part of the order.

(13) In the event that a fresh injunction (or the continuation of the existing injunction) is sought after the cooling-off period in order to protect the rights of clinicians or other hospital staff, the application should be made by those individuals (or one or more representatives of them), relying on the relevant cause or causes of action. It should be supported by specific evidence.

(14) The court should begin its assessment of any application for such an injunction, or for the continuation of such an injunction, by considering the relevant domestic law.

(15) When the court considers whether the grant or continuation of such an injunction is compatible with the Convention rights protected by article 10, or whether its refusal or discharge would be compatible with article 8, it needs to consider (a) whether there is an interference with the relevant right which is prescribed by the law, (b) whether it pursues a legitimate aim, ie an aim which can be justified with reference to one or more of the matters mentioned in article 10(2) (or article 8(2), as the case may be), and (c) whether the interference is necessary in a democratic society.

(16) In answering the last of those questions in relation to article 10, the need for any restriction of freedom of expression must be established convincingly. It must be justified by a pressing social need, and must be proportionate to the legitimate aim pursued. This consideration applies with particular force to preventive restraints on publication, and is reflected in section 12(3) and (4) of the Human Rights Act.

(17) In assessing proportionality in a situation where there are competing rights under articles 8 and 10, the court should consider the criteria established in the case law of the European court, so far as relevant.

(18) The court should also consider how long the duration of any restriction on freedom of expression needs to be, and whether the reasons for the restriction may be affected by changes in circumstances. A permanent restriction would require compelling circumstances.

(19) Weight can be given to the importance of protecting the medical and other staff of public hospitals against unfounded accusations and consequent abuse. However, the court should also bear in mind that the treatment of patients in public hospitals is a matter of legitimate public interest, and that the medical and other staff of public hospitals are public figures for the purposes of the Convention, with the consequence that the limits of acceptable criticism are wider than in the case of private individuals.

Lord Sales gave a concurring judgment, "*to emphasise that it is important to remember that in cases of this sort the clinicians have rights as well, which also require respect and protection*." He focused in particular on the initial phase of events when the child is being treated and made a particular point of noting at paragraph 185 that:

cases of this sort can arise very suddenly, and hospital trusts and clinicians will naturally look to the decision in this case for guidance as to how they should proceed. I do not think the trusts in the Abbasi and Haastrup cases can be criticised for taking the

> *action they did in the initial phase, nor for taking it upon themselves to assert the rights of the clinicians in their employment. I think they proceeded in a laudable and appropriate manner.*

At paragraph 188, he observed that:

> *In those cases and more generally it seems strange to say that a claim for an injunction to protect the clinicians' rights could only be justified indirectly by invoking the child's best interests. In my view, it would be appropriate for the court to respond directly to the claim actually brought in such cases, as they did in the Abbasi and the Haastrup cases, namely by identifying the rights of the clinicians themselves and granting relief to protect those rights. In all these cases, the rights of the clinicians have legal significance in the same way as do the rights of the children. A court should not disregard legal rights, wherever they exist and are properly invoked. Also, analytically, since in such cases the impact on the best interests of the child is an indirect consequence of the impact of the harassment on the clinicians, the rights of the clinicians are implicated more directly and are, so to speak, in the front line of the rights requiring protection from the courts rather than in some way a subsidiary matter of concern or irrelevant.*

Lord Sales expressed the view that, in the initial phase:

> *194.* […] *the clinicians are concentrating on caring for the child and cannot be expected to have to worry about taking legal advice and protecting their own rights. If their rights are to count for something in that period – and they should – someone needs to be able to act on their behalf to assert their rights by commencing or participating in legal proceedings.*
>
> *195. In my view, the hospital trust is the obvious appropriate person who can take on that role and act on behalf of the clinicians to assert their rights. This is what the trusts purported to do in the cases before us. I do not think this court should be shy of saying that they acted appropriately in doing so.*
>
> *196.*[…] *in the pressurised circumstances of the initial phase, the clinicians do not have a fair opportunity to consider, seek legal advice about and take legal proceedings to protect their rights. Their attention is understandably elsewhere, directed to providing care for the child. They should not be distracted from that. It would be completely unreasonable to expect them to have to worry about their own legal position and about taking legal steps to protect themselves and (as may be the case) their families from harassment, assault and so on. If in this phase their Convention rights are to be practical and effective rather than theoretical and illusory, as is required by the Convention (see Airey v Ireland (1979-1980) 2 EHRR 305, para 24, and "[t]his is particularly so of the right of access to the courts in view of the prominent place held in a democratic society by the right to a fair trial"), someone has to step in to assert those rights on their behalf in legal proceedings. The law has to be pragmatic about this. A limited departure from the usual position set out at para 193 above [i.e. that the clinicians themselves should be taking their own steps to protect themselves] is required.*

However:

> *202. Outside the initial phase and a suitable cooling-off period which is long enough to allow clinicians time to collect their thoughts and seek legal advice about their position, the justification for departing from the usual position (para*

> *196 above) disappears and the standard procedural requirement that the clinicians, as adults with capacity, should act on their own behalf is applicable.*
>
> *203. Lord Reed and Lord Briggs do not rule out the possibility that in some circumstances it will be appropriate for the court to grant injunctions to protect the article 8 rights of clinicians in proceedings commenced by a hospital trust: para 98 above. In my opinion, the initial phase in these cases was in this category.*

Comment

The Supreme Court have laid out a very clear route map for what needs to be done in future cases; as noted at the outset, that route map will apply just as much in serious medical treatment cases involving incapacitated adults. That will no doubt be taken into account in any future revision of the transparency orders made by the Court of Protection (including those provide for protection of other professionals, such as social workers).

It is also of some importance, we would suggest, that – unlike the Court of Appeal – the Supreme Court accepted that it was, in principle, to take account of the concerns expressed by the interveners as to the "*about the potential impact of attacks on clinicians and other hospital staff on morale and recruitment are irrelevant. Account can be taken of the importance of protecting the medical and other staff of public hospitals against unfounded accusations and consequent abuse*." Even if the limits of acceptable criticism may be wider than in the case of private individuals, that does not give carte blanche to those who wish to criticise clinicians and other hospital staff who may – in many cases – not be in a position to be able to respond.

Alex discussed the implications of the judgment in a webinar held together with Hannah Taylor of Bevan Brittan on 9 May, the recording of which is available here.

Cross-border capacity

A new protocol regulating communications between judges in Scotland, England & Wales, and Northern Ireland has been agreed for cases involving adults who lack capacity.

Published on 7 May 2025, the protocol for cases involving adults who lack capacity was agreed on 4 April 2025 following a series of meetings of members of the judiciary from each jurisdiction between 2021 and 2025.

It sets out that direct judicial communications are to be conducted using a request form sent to the relevant office.

The protocol is supported by supplementary information in the form of a Handbook on law relating to Adults Who Lack Capacity in England & Wales, Scotland, and Northern Ireland (full disclosure, I led on the English & Welsh section, alongside Francesca Gardner, Thomas Jones, and Kriti Upadhyay.

A protocol regulating communications between judges in Scotland, England & Wales, and Northern Ireland in children's cases can also be found on the judicial website, where updates to the accompanying handbook can also be found.

The protocol, request form and accompanying handbook can be found below:

- Judicial Protocol regulating direct judicial communications between Scotland, England & Wales and Northern Ireland, in cases of adults who lack capacity (PDF)
- Request form – Capacity Cases Protocol (Word doc)

- A handbook on adult capacity law in Scotland, England & Wales, and in Northern Ireland – April 2025 (PDF)

Cross-border deprivation of liberty

Argyll And Bute Council v RF [2025] EWCOP 12 (T3) (Theis J)

International jurisdiction of the Court of Protection – recognition and enforcement

Summary[1]

RF was habitually resident in Scotland but had been residing in England for a number of years. The issue was whether the Court of Protection under Schedule 3 MCA 2005 should recognise a Scottish guardianship order that authorised RF's deprivation of liberty for 3 years (although the local authority ultimately sought a recognition period of 1 year only). RF had been subject to a previous guardianship order which granted the local authority wide powers. A further application was made for one in 2025, Theis J noting that, in the lead up to the application, RF had no advocate, was not consulted about the application, "*was not joined as a party, nor was a safeguarder or other representative appointed to represent him in the proceedings*." She also noted the extensive powers granted to the Guardian under the 2025 order, which included the power to re decide where RF should live, to require him to live at that location, to convey him to that location and to return him there, as well as to decide and approve the appropriate level of care and supervision to be provided to RF and to authorise, where necessary and appropriate for the safety and protection of RF and others, any physical restraint including environmental restraint.

In considering whether or not the court should recognise and enforce the 2025 Guardianship application, the parties agreed that the relevant test was set out in paragraph 19 of Sch 3 Part 4 MCA 2005, which provides that a court may refuse to recognise a protective measure taken by the country in which the person is habitually resident, on a number of grounds, including sub-paragraphs (3) and (4), which provide that:

> *(3) But the court may disapply this paragraph in relation to a measure* [i.e. not recognise it] *if it thinks that*
>
> *(a) the case in which the measure was taken was not urgent,*
>
> *(b) the adult was not given an opportunity to be heard, and*
>
> *(c) that omission amounted to a breach of natural justice.*
>
> *(4) It may also disapply this paragraph in relation to a measure if it thinks that*
>
> *(a) recognition of the measure would be manifestly contrary to public policy,*
>
> *(b) the measure would be inconsistent with a mandatory provision of the law of England and Wales, or*
>
> *(c) the measure is inconsistent with one subsequently taken, or recognised, in England and Wales in relation to the adult.*

The Official Solicitor argued that both of these grounds applied.

The key requirements for Article 5 compliance were summarised at paragraph 56:

[1] Note: Alex having been involved in the case, he has not contributed to this note.

(a) A process for the initial detention which ensures that there is sufficient evidence before the court that the proposed detainee is suffering from a mental disorder, and that this is of a nature and degree necessitating the actual confinement proposed (Art 5(1));

(b) Accordingly, evidence to enable the court to consider whether the proposed restrictions are proportionate to the risks to the detainee and/or others if they are not imposed (Art 5(1));

(c) An effective opportunity for the proposed detainee to be heard on the application, which may require independent representation (Art 5(1));

(d) An opportunity for speedy review of the confinement by a court, which again may require independent representation for the detainee (Art 5(4));

(e) Provision for further regular review by the court at such intervals as is necessary to provide sufficient safeguards for the detainee (Art 5(4));

(f) Those reviews should not be dependent on the goodwill of the detaining authority, and should be conducted with up to date medical evidence (Art 5(4));

(g) The availability of effective independent representation for the detainee throughout the period of confinement, as an independent check on whether their circumstances may have changed such that the restrictions in place are no longer required to the same degree of intensity, and to support an application to court if one is needed (Art 5(4)).

Theis J concluded that the 2025 Guardianship Order should not be recognised because (addressing each of the relevant parts of paragraph 19):

(a) RF was not joined as a party to the application and no independent advocate or safeguarder was appointed to represent him, despite the draconian nature of the orders being sought. RF depended on third parties (a combination of family members, social workers and clinicians) to ensure the Sheriff court had all the relevant information about his circumstances and his views. This procedure was not compatible with Article 5 (1) which required that an adult who is being deprived of his liberty to be afforded sufficient effective opportunity to be heard in the course of those proceedings. As a consequence, the process by which the 2025 Guardianship order was made was not compatible with RF's Article 5(1) rights, making it unlawful under s6(1) HRA 1998.

(b) The previous order lapsed over six months earlier, with no urgency for the present one; not giving RF an effective opportunity to be heard breached natural justice.

(c) Separately, and through the prism of the public policy exception under paragraph 19 of Schedule 3, Theis J was concerned that the Guardianship order was to last 3 years with no provision for reviews within that period. Although RF could apply to the court under s71(1) AWI 2000, or RF or someone on his behalf could raise his case with the Commission, RF's Article 5 rights would be *'theoretical and illusory'* not *'practical and effective'*. There was no mechanism in place to give practical effect to those provisions for RF bearing in mind the basis for the proceedings regarding RF's mental capacity and the lack of any effective review process. That meant that the Guardianship order did not comply with Article 5(4) ECHR. Theis J expressly noted that she reached this

conclusion in the context of the maximum one year period in the MCA 2005 for the authorisation of a deprivation of liberty pursuant to Sch A1, para 29(1).

Therefore:

> *93.* […] *whilst respecting the importance of comity and acknowledging the differences in the legal framework as between Scotland and England and Wales, in circumstances where I have found that the 2025 Guardianship order was made in breach of natural justice and recognition of it would be manifestly contrary to public policy I should exercise my discretion to refuse recognition of the order."*

Comment

This decision follows that of Poole J in *Aberdeenshire Council v SF, EF and Sunderland City Council* [2024] EWCOP 10. In the Scottish section of the report, Adrian Ward discusses the implications in Scotland. In respect of applications for recognition and enforcement of Scottish orders in England & Wales, applicants would be well advised to ensure that the application complies with Article 5 ECHR in that:

(a) The subject matter of the application is properly consulted prior to the application being made.

(b) The subject matter of the application is represented on the application.

(c) The application is only granted for a maximum 12 month period.

(d) The subject matter of the application has practical and effective (as opposed to "theoretical and illusory") access to a court to challenge any deprivation of liberty imposed upon him/her as a result of the Guardianship order.

Short note: taking intermediaries seriously

In *M (A Child: Intermediaries)* [2025] EWCA Civ 440, the Court of Appeal took the opportunity to correct observations made obiter by High Court judges who appeared to be perceiving that intermediaries are being appointed too frequently. Whilst there is, as yet, no statutory provision / Practice Direction governing the appointment of intermediaries in cases before the Court of Protection, we set out the summary of the judgment as it applies by analogy. At paragraph 7, Peter Jackson LJ identified that, in deciding whether and, if so, for what purpose to approve the appointment of an intermediary:

> *(1) The court will exercise its judgement within the framework of Part 3A of the Family Procedure Rules 2010 ('the FPR') and Practice Direction 3AA. These provisions are not complex, and they require very little elaboration. Their relevant parts appear in the Annex below. By following them, the court will steer a path between the evils of procedural unfairness to a vulnerable person on the one hand, and waste of public resources on the other.*
>
> *(2) The test for the appointment of an intermediary for any aspect of proceedings is that it is necessary to achieve a fair hearing. Decisions are person-specific and task-specific, and the introduction of other tests upsets the balance struck by the FPR and may draw attention away from the circumstances of the individual case.*
>
> *(3) Efficient case management will assist sound decision-making in this area. There must be early identification of vulnerability where it exists. Intermediaries are not experts, but applications for intermediary support should be*

approached with similar procedural discipline. Different considerations may apply to different elements of the proceedings, and the court should normally require an application notice and/or a draft order that specifies the exact extent of the requested assistance.

(4) Correctly understood, the court's powers are wide enough to permit it to authorise intermediary assistance for legal meetings outside the court building. However, support that is necessary in the courtroom may be unnecessary in a less pressured setting. Accordingly, the court should give separate consideration to any application of that kind.

(5) The Family Court is accustomed to using checklists when making procedural and substantive decisions. The mandatory checklist in FPR rule 3A.7 is an essential reference point to ensure that the factors relevant both to the individual and to the proceedings are taken into account. The weight to be given to them is a matter for the court, making a broad and practical assessment.

(6) An application for an intermediary must have an evidential basis. This will commonly take the form of a cognitive report and, if authorised, an intermediary assessment. Other evidence may come from the social worker or the Children's Guardian. The court can also take account of submissions on behalf of the vulnerable person, and from the other parties, as they may have their own perspectives on the overall fairness of the proceedings. This reflects the collaborative nature of the task of identifying and making adjustments for vulnerability. Whatever the evidence and submissions, it is for the court, and not others, to decide what is necessary to achieve a fair hearing in the individual case.

(7) When considering whether an intermediary is necessary, the court will consider other available participation directions. In some cases they will be effective to secure fairness, so that an intermediary is unnecessary, or only necessary for a particular occasion, while in other cases they will not. The court is entitled to expect specialist family lawyers to have a good level of understanding of the needs of vulnerable individuals in proceedings and an ability to adapt their communication style. It will consider what can reasonably be expected of the advocates, and in particular of the vulnerable party's advocate in the individual case, bearing in mind that professional continuity may not be guaranteed. Intermediaries should clearly not be appointed on a 'just in case' basis, or because it might make life easier for the court, but equally advocates should not be required to stray beyond their reasonable professional competence to make up for the absence of an intermediary where one is necessary.

(8) The rules provide that the reasons for a decision to approve or refuse participation directions for a vulnerable person must be recorded in the order. That can be done very briefly, and it is a further useful discipline.

(9) The approach described should ensure that intermediaries are reliably appointed whenever they are necessary, but not otherwise.

The broader observations made by Peter Jackson LJ as to “vulnerable persons” in family proceedings at paragraphs 9 to 17 apply equally by analogy to proceedings before the Court of Protection, although we are very mindful of how charged the term “vulnerable” is.

MENTAL HEALTH MATTERS

Diabetes and section 63 MHA 1983

Nottinghamshire Healthcare NHS Foundation Trust v MC [2025] EWHC 920 (Fam) (High Court) (Family Division) (Morgan J)

Other proceedings – family

Summary[2]

For many years a detained patient, MC, had type 1 (insulin dependent) diabetes which he had deliberately mismanaged which led to severe hypertension and peripheral vascular disease. He was non-compliant with blood tests to monitor blood glucose levels and refused most of his daily insulin, but often took it in the evening. In January 2024 he required a below-the-knee amputation secondary to gangrene and sepsis because of poor compliance with diabetes treatment, and now had end stage complications resulting in damage to the back of the eye, nerve damage and chronic loss of kidney function.

MC, who had capacity to make decisions about that treatment, usually refused most of the treatment. Without consistent and comprehensive treatment, he would inevitably die.

MC's treating trust NHS Trust applied for an order under the inherent jurisdiction of the High Court that a decision not to impose treatment under s.63 MHA 1983 was lawful. The treatment in issue was treatment for type 1 diabetes and its complications.

The Trust argued the proposed treatment was for mental disorder because his refusal was a manifestation of severe personality disorder but the restraint required would lead to adverse outcomes so should not be used, despite the risk of MC's early death. MC had capacity to make the decisions and conduct the proceedings. MC argued that the treatment fell outside s.63 MHA 1983 and that it was not in his interests for treatment of his physical conditions to be forced upon him. He also disputed the diagnosis of personality disorder, did not want to die and, in an emergency, would want treatment to save his life.

Morgan J held that the relevant treatment fell within s.63 MHA 1983. Although type 1 diabetes might often be diagnosed in childhood and was not in and of itself a manifestation of mental disorder, the progression of the symptoms and currently serious diabetic complications were such a manifestation. As she put it at paragraph 46:

I agree that it may be, that MC's approach to health care includes elements of a strong wish to control in an environment where the opportunity to exert control is markedly diminished (inevitably so, the environment being a ward in a high secure institution populated by those with severe personality disorders). I accept nevertheless Dr B's evidence that the strong wish to control has its roots in his severe personality disorder. The severe personality disorder, as Dr B's evidence so helpfully explained, is in effect shorthand, which gathers into it the features making up the condition of for example his paranoia, distrust and confrontational functioning. This manifests itself in an approach to health care which is not intentional self-harm but prioritises in decision making those features in which feed into his overwhelming desire to have and exert control eclipsing those which would lead to him having better physical health.

Morgan J also held that MC had capacity to make relevant medical treatment decisions, and

[2] Note, Arianna having been involved in the case, she has not contributed to this summary.

that it was lawful for treatment not to be imposed on him pursuant to the s.63 powers of his responsible clinician.

Comment

Readers may be puzzled as to what the purpose of the Trust's application was. There was no doctor proposing to provide treatment to MC against his wishes. MC was in agreement with that approach. The Trust had sought a second opinion which supported their plan. There is no appellate authority setting out a legal obligation to seek an order from the High Court approving a decision not to exercise powers of compulsory treatment under s.63 MHA 1983 (although Mostyn J had expressed the view in *Nottinghamshire Healthcare NHS Trust v RC* [2014] EWCOP 1317 – prior to the Supreme Court decision in *Re Y* – that a decision not to provide life-saving treatment under s.63 likely engaged Article 2 and Trusts would be *'well-advised'* to bring an application for declaratory relief). MC's arguments about whether or not the treatment was treatment was mental disorder were not determinative, as whether or not s.63 was engaged, there was no plan to administer the treatment to MC against his wishes. There was even agreement that in an emergency, MC would be given urgent treatment as would any other patient. The judgment includes the evidence of one of the Trust's witnesses, Dr A, who said that "*"I worry about a situation where a nurse gives him insulin in the evening in those circumstances and he is hypoglycaemic overnight and dies. The coroner will ask the nurse if they gave him insulin and then will ask did you check his blood sugar level before you gave it"*. As the judge noted, this comment goes "*some way in explaining how, in circumstances where a capacitous individual does not wish to have treatment imposed against their will, and a Trust does not wish to impose such treatment against their will, that seemingly uncontentious state of affairs has nonetheless required a contested application before this court."*

More broadly:

1. MC's capacity to make the decisions brings into sharp focus the physical/mental treatment divide, by which he could refuse the former but not the latter if clinically indicated, which in this case it was not.

2. The decision reflects the traditionally broad interpretation given to 'treatment for mental disorder'. Whilst the attempt to persuade Morgan J that this interpretation is one that requires revisiting in light of the evolving Strasbourg case-law did not tempt her into the new landscape, it is an area which is going to be under the spotlight as the Mental Health Bill progresses.

Mental Health Bill progress

The Mental Health Bill has now left the House of Lords and will come before the House of Commons. Progress can be tracked here, where you can also find a helpful "Keeling Schedule" version prepared by the DHSC of the Mental Health Act 1983 as amended by the Bill (Alex can breathe a sigh of relief, because it means reliance does not need to be placed any more on his unofficial version). As noted by Tim Spencer-Lane in his helpful article, key amendments made by the Lords in face of Government opposition (which are likely to be reversed) are (1) expanding those who can carry out functions under ss.135/136; (2) placing a 12 month limit on CTOs unless substantial procedural hurdles were overcome; and (3) imposing a duty to debrief patients.

Calocane inquiry chair named

The retired judge HH Deborah Taylor has been appointed to chair the public inquiry into the events that led to the killings by Valdo Calocane in Nottingham in June 2023.

The statutory inquiry will have the power to examine all the agencies involved, including the Nottinghamshire Police and the Crown Prosecution Service; compel witnesses, and establish the facts. The Prime Minister has committed that the inquiry should report within two years.

Parliamentary Office of Science and Technology notes

The Parliamentary Office of Science and Technology has published two recent POSTnotes on AI and Mental Healthcare – Opportunities and Delivery Considerations - oppo, and AI and Mental Healthcare – Ethical and Regulatory Considerations. As with all POSTnotes (there are also others, for instance, about mental health reform) these two provide an accessible and up-to-date survey of the relevant issues.

CHILDREN'S CAPACITY

The Court of Appeal explains why local authorities cannot consent to the confinement of children in their care

The Court of Appeal announced on the day of the hearing of the appeal against the decision of Lieven J in *Re J: Local Authority consent to Deprivation of Liberty* [2024] EWHC 1690 (Fam), that it would allow the appeal. On 29 April, it gave its reasons for doing so (*J v Bath and North East Somerset Council & Ors* [2025] EWCA Civ 478.

The President of the Family Division, Sir Andrew McFarlane explained Lieven J's error at paragraph 52:

> *That error, in short, was to focus on whether, as a matter of domestic law, a local authority may provide 'valid consent' in order to avoid engaging limb (ii) of Storck. If, instead, the focus had been, as it should have been, upon the overarching purpose of Art 5, as determined by HL v UK and Cheshire West, the inevitable conclusion would have been that, irrespective of the domestic law relating to parental responsibility, the State can never give valid consent in these circumstances.*

Lady Justice King agreed and made clear (at paragraph 57) that:

> *Put simply, in order to satisfy the requirements of Art 5, there must be an independent check on the State's power to detain. The local authority is an organ of State which, albeit acting in their best interests, is confining the child. The second limb of Storck requires there to be valid consent to that confinement. It is as Ms Roper submitted (see [35] above), inconsistent with Art 5 for that organ of State to 'both create the conditions in which a vulnerable person is confined and then to be able to give valid consent [to that confinement] so as to remove the case from Art 5.'*

Singh LJ agreed with the President, and at paragraph 58 noted that:

> *This case provides a powerful example of the way in which human rights issues can arise in any legal context. The Human Rights Act 1998, and the Convention rights to which it gives effect in domestic law, constitute the overriding legal framework for the determination of such issues, in whatever jurisdiction they arise. It is important that sight should not be lost of that framework, and the values which underlie the fundamental rights which it seeks to protect, whatever the context in which those issues arise.*

Disclosure of information between Coroners and the Family Court

Joint guidance has been published on this by the President of the Family Division and the Chief Coroner and applies to cases:

> *a) Involving the death of a child or adult where the circumstances of the death may be relevant to, and/or has the potential to inform, the assessment of risk concerning the subject children in family proceedings.*
>
> *b) Where an applicant seeks to use samples from a deceased person for the purposes of establishing paternity of a child.*

The Guidance set out that '[w]*here there are parallel family and coronial proceedings concerning the fatality of a child or adult, this 2025 Protocol provides guidance on good practice for Family Court Judges and Coroners in relation to information-sharing, disclosure requests and the avoidance of delay*.'

Key points from the guidance (which is likely to be useful also by analogy in cases before the Court of Protection):

- Coronial courts may rely on conclusions reached in the Family Court, and there may be good reasons not to re-hear evidence heard in the Family Court at the inquest.
- Coroners and Family Court Judges, sitting within the same region, are encouraged to meet each other on a regular basis (annually) to discuss issues of mutual interest and establish a local cross jurisdictional network' and lines of communication should remain open.
- Where disclosure is provided between the jurisdictions, whether on a formal or informal basis, it is important to consider the position of any parents who are the subject of proceedings under Part IV of the Children Act 1989. Family Court Judges should consider whether it is appropriate to notify the parents of any intended disclosure between the jurisdictions and to give them the opportunity to object.
- Where abuse or neglect of the deceased is suspected [and a time to receipt of a full postmortem report is likely to be several months], the Pathologist should provide an interim written report for child protection purposes setting out any provisional opinions identifying those matters which, in the opinion of the Pathologist, might indicate or give rise to safeguarding issues…Where parallel proceedings are issued in the Family Court, the information provided to the pathologist and the opinions expressed by them in the interim post-mortem examination report are highly likely to be relevant to the determinations to be made by the Family Court.
- When the Coroner is informed that proceedings in the Family Court are commenced or contemplated, the Coroner should seek to accommodate the timetable of the Family Court proceedings (as far as it is known) and the requirement that care proceedings must be completed within 26 weeks of the date on which the application was issued. The Coroner should usually disclose the outcome of all interim investigations, the interim post-mortem examination report and any further information, witness statements and final or interim reports relating to the cause of death to the Family Court within 20 working days of a request for disclosure of this information from the Family Judge.
- Coroners should note that material provided by the Coroner to the Family Judge cannot be provided on a "Judge to Judge" basis. Material provided to the Family Judge will need to be made available by the Family Judge to the parties in the Family Court proceedings. The Coroner should notify the Police and the relevant Local Authority of any request for disclosure by the Family Court, setting out the information to be disclosed and the date when disclosure will take place. This will enable the Police and/or Crown Prosecution Service to make timely representations to the Family Court if there is any objection to disclosure.
- The Coroner may decide to adopt the findings made in the Family Court, where they are relevant to the questions that the Coroner is required to answer in fulfilling their statutory obligations.
- Even where the Coroner decides not to adopt findings, the Family Court judgment may assist the Coroner in their investigation. Family Courts can criticise agencies and this

can be relevant to whether a death may have been preventable.

- As a result of the confidential nature of family proceedings, the Family Judge should notify the Coroner of the existence of the family proceedings.
- When a Family Court Judge makes a Transparency Order or a Reporting Restriction Order in a case where there is a parallel coronial investigation and/or inquest, a copy of the order should be provided to the Coroner. The Coroner should provide these orders to the media, to ensure that the media is aware that these orders exist and can comply with them.

The Guidance sets out proposed procedures and template forms for disclosure between family and coronial proceedings.

Paying the price of failure

Re Holly [2025] EWHC 465 (Fam) (High Court (Family Division) (Keehan J))

Mental capacity – assessing capacity

Summary

These proceedings concerned a young woman, named as 'Holly' in the judgment. She turned 18 in February 2025 (a few weeks before the judgment was handed down). She had been cared for throughout her life by her maternal grandparents (both parties to the proceedings). Her mother had played no role in her life, and her father was deceased.

Keehan J summarised Holly's difficulties as follows:

> *Holly was diagnosed as suffering from a number of conditions, including autism and foetal alcohol syndrome, and found to exhibit a number of challenging and concerning behaviours, principally self-harming and suicidal ideation.*

She had first been the subject of a DOL order in April 2022, having been admitted to hospital some two weeks earlier. Shortly after this care proceedings were issued and her grandparents agreed to her being accommodated pursuant to s.20 of the Children Act 1989. Thereafter a series of DOL orders were made, authorising Holly's deprivation of liberty at an unregulated placement.

As early as July 2022 the court and the parties were in receipt of a report from a jointly instructed psychology expert who recommended that Holly should have treatment by way of DBT, together with a 12 month (minimum) residential placement at a therapeutic establishment.

This recommendation was accepted by all parties. It will come as no surprise to anyone practicing in this field to learn that no such placement was identified for Holly during her childhood. Instead, she was deprived of her liberty at three unregulated placements under Court authorised DOL orders. Her time in these placements was punctuated with very serious episodes of self-harm (in which she often ended up in hospital) and other challenging behaviour including *"a very serious incident when she climbed over the rails of a bridge over the M20. This necessitated the closure of a section of the motorway and the attendance of the police to remove her from the bridge. She was taken to hospital for assessment and when there she self-harmed."*

The purpose of the judgment was to set out in public, the very sorry chronology of the local authority's efforts to find Holly a suitable placement, and a critique of the local authority's

conduct. A few of the more egregious examples include:

- Moving Holly to another unregulated placement (Unit B), without the prior agreement of her grandparents (who head parental responsibility) or the consent of the Court.
- The Director of Integrated Children's Services authorising the cessation of a search for a registered residential placement for Holly as recommended by the expert, on the basis that Holly was happy at Unit B and the placement 'appeared' to be meeting her needs. This was compounded by the fact that the cessation of the search was not revealed to the court and the other parties for a year. As Keehan J noted "*this decision was made without the consent of or without notification to the grandparents who, unlike the local authority, held parental responsibility for Holly and wished for her to be placed in a residential therapeutic placement*."
- On another occasion ceasing the search for a regulated placement on the erroneous basis that the court had approved Holly's placement at Unit B.
- Failing to disclose (for a year), the fact that Ofsted had issued a cease and desist notice in relation to the use of Unit B.

As Holly approached adulthood, she was assessed as having the capacity to make decisions about her residence and care as well as being able to conduct litigation. This caused the Guardian to make the important point *"that the window for effective intervention with [Holly] is rapidly closing. She is fast approaching adulthood, and she remains a high risk to herself. She is not equipped with the tools that she needs to live independently. In light of the assessment of [Holly's] capacity, it is apparent that there is very limited period of time in which the court will be able to seek to ensure that [Holly] receives the sort of care and support that she urgently requires*."

The local authority in their final statement set out the services that could be offered to Holly as an adult. Keehan J expressed the sincere hope that they would indeed be offered to her, as "*she remains an exceptionally vulnerable young person whose unaddressed and complex needs present a grave risk to her safety and wellbeing*."

In his final analysis, Mr Justice Keehan did not hold back:

> *83. I readily acknowledge that there is an acute lack of provision in England and Wales for children and young people who are very vulnerable and have the most complex needs. They require a considerable array of multi agency resources to enable them to be kept safe, to remain stable and to achieve their full potential in their future lives. There is a particularly chronic shortage of therapeutic residential placements which have the expertise to meet the immediate and longer term needs of this cohort of young people.*
>
> *84. I also acknowledge the challenges presented to this local authority in attempting to address the needs of Holly in particular her need for a therapeutic residential placement for sustained therapeutic intervention and for appropriate educational provision. On many occasions she failed to engage with and/or refused to accept the offers of services, therapy, education and support offered to her. None of this should have come as a surprise to any professional experienced in dealing with vulnerable young people with complex needs. At other times she appeared superficially to be happy and settled, but behind this outward display of stability lay the emotional struggles and turmoil of an emotionally and psychologically damaged young person. This should*

never have been accepted as a sign that all was well or that progress has been made by Holly. The history of this case demonstrated that all so very often these periods of apparent stability were followed by episodes of serious self harm or risky and challenging behaviours which were most recently seen in December of last year and in January of this year.

85. In this context I was dismayed that a significant part of the local authority's position statement for this hearing contained such negative and, in my view, wholly unwarranted criticisms of the grandparents and of the guardian. […]

86. [….] *I have a clear sense of this local authority having taken, at best, a reactive rather than proactive response to providing for Holly's needs and supporting her wellbeing.* […]

87. I recognise and accept that various attempts were made to access mental health and educational services for Holly. However, the searches for appropriate residential placements, […] *were wholly inadequate,* […] *The local authority paid lip service to the recommendations of Dr Bentley but never seriously embraced them or pursued them with any vigour.* […]

88. I can only conclude that this demonstrated a complete lack of commitment by this local authority to providing for the needs of this vulnerable and complex young person.

89. I accept that the proper provision of therapeutic residential placement for Holly with access to mental health services and education provision may not have met or addressed all of Holly's needs and she might well have remained a deeply troubled and vulnerable young person. This local authority denied her the opportunity to take advantage of such a specialist placement or of such specialist therapeutic support to give her the best chance of overcoming her difficulties, to a greater or lesser degree, and to achieving her full potential in her childhood.

Comment

This case is another in a long line of cases in which young people with complex needs are cared for in unregulated and inappropriate placements. As the Guardian noted

> *there are far too many young people who fall between the gap in terms of eligibility for CAMHS Tier 4 provision and the limited number of therapeutic residential placements open to be funded through children's services. There are too few resources for the young people who desperately need them.*

What perhaps marks this judgment out, amongst the many, is the clearly identified and multiple failures on the part of the local authority to effectively search for the type of placement the expert had recommended for Holly (the Guardian noted that in a 72 week period the only active searches undertaken by the local authority took place over a period of 6 weeks and 8 days, something Keenhan J called wholly inadequate) and to consult with her grandparents (called inexcusable by Keehan J).

What also comes across clearly in this case is the fact that as a result of the failure to provide Holly with timely intensive support, Holly was assessed as now meeting the criteria for an Emotionally Unstable Personality Disorder and had become disillusioned with the therapy and so would be resistant to it. While this support is of course resource heavy, the point was made by the expert that Holly is likely to be a long term user of social services and adult mental health

services, and the opportunity had probably been lost to give her the chance to build a life worth living.

THE WIDER CONTEXT

Terminally Ill Adults (End of Life) Bill update

The Terminally Ill Adults (End of Life) Bill will return to the full House of Commons for Report stage on 16 May. On 2 May, the impact assessment, equality impact assessment and human rights memorandum promised by the Government to assist Parliament in its consideration of the Bill were published. They can all be found on Alex's updated resources page on the Bill.

Independent commission into adult social care

With many hoping that they cannot hear the sound of long grass rustling, the terms of reference of Dame Louise Casey's independent commission into adult social care in England were published on 2 May 2025.

The terms of reference set out that the commission will report directly to the Prime Minister and will be split over 2 phases:

- phase 1, reporting in 2026, will focus on making the most of existing resources to improve people's lives over the medium term
- phase 2, reporting by 2028, will then consider the long-term transformation of adult social care.

Short note: what interest does a defendant have in determining a claimant's litigation capacity?

GRM v Liverpool University Hospitals NHS Foundation Trust [2025] EWHC 790 (KB) concerned a claim in the King's Bench Division, which had been brought by 'GRM' against Liverpool University Hospitals NHS Foundation Trust for clinical negligence. A preliminary issue arose as to whether GRM had litigation capacity. GRM's solicitors had become concerned about his capacity to conduct proceedings in 2023, and both the Claimant and Defendant had served expert evidence on GRM's capacity. In September 2024, a judge had determined that he did not have capacity to conduct proceedings (apparently on an interim basis) and appointed the Official Solicitor as his litigation friend. The matter was listed for a further hearing (in the KBD) to consider GRM's litigation capacity and make decisions as to GRM's property and affairs.

Bright J considered whether the Defendant had an interest in the appointment of a litigation friend, and concluded that it did not:

> *24. This is not a case where the Defendant has any real interest in whether or not a litigation friend is appointed. That is especially so where the proposed litigation friend is someone obviously suitable, such as the Official Solicitor. The appointment will cause no real prejudice to the Defendant. If anything, it will provide a degree of protection. Otherwise, for example, any settlement reached might be subject to retrospective challenge on the basis that the Claimant did not have the capacity to agree to it. That is because any decision made now as to capacity would not be capable of establishing the Claimant's capacity in the future – in particular, at whatever date in the future the parties may come to settle (if they do).*
>
> *25. Mr Rahman, on behalf of the Defendant, tried to persuade me that the appointment of a litigation friend would or at least might prejudice the Defendant, because it would mean that any settlement would require the approval of the court and because (he said) a finding of lack of capacity might impact on quantum. Addressing these points:*
>
> > *i) Approval of a settlement is not a significant burden for the parties;*

> *especially not, in most cases, for the Defendant. As already indicated, any disadvantage that may flow from that minimal burden is greatly outweighed from the certainty that arises from court approval and the protection that comes with it.*
>
> *ii) I accept that a finding of lack of capacity in respect of managing affairs might affect quantum. However, that should and can best be decided on the evidence at trial. There is no need for it to be a preliminary issue.*
>
> *26. Mr Rahman also suggested that a decision that the Claimant does not have capacity would affect the evidence as to psychiatric injury and its consequences. I am unable to see how it could make any real difference to this aspect of the trial.*
>
> *27. It follows that this is not a case where it was appropriate for the Judge to order a preliminary issue or to make the directions made in paragraphs 4 to 16 of the Order of 13 September 2024.*

Bright J, while expressing sympathy for the first-instance judge, stated that it was not clear how a decision was taken to appoint the Official Solicitor as litigation friend, and then also have a trial on the issue of capacity to allow the Defendant to challenge this decision. Bright J found that:

> *33. In all the circumstances, it seems to me that the Judge should not have allowed the Defendant to "intermeddle" (adopting the word used by Pill LJ). On the basis of the Claimant's evidence, the court was clearly entitled to decide that the Claimant lacked capacity and to appoint the Official Solicitor; which is what the Judge did, in paragraph 2 of the judgment and at paragraph 1 of the Order.*
>
> *34. I have noted above that the Claimant's evidence in support of the application was the report of Dr Ford, which was on the standard COP3 form. Dr Ford gave her view clearly and unambiguously, which was that the Claimant lacks capacity. The report was brief, but that is not a vice in itself. On the contrary, it is what is expected, where the standard COP3 form is used – as is entirely proper. It was undoubtedly sufficient to support a decision by the court to appoint a litigation friend.* […]
>
> 37. *The Defendant's experts and Mr Rahman make the point that there is reason to believe that the Defendant's mental condition may improve with treatment. If so, that will be highly relevant to quantum. However, the potential for improvement in the future is not relevant to current mental capacity. At present, in the Claimant's own words, he can't cope with any bits of paper coming in.*

Short note: hoarding, capacity and the limits of the landlord's obligations

In *Thiam v Richmond Housing Partnership* [2025] EWHC 933 (KB), Swift J considered an appeal of a March 2024 decision of HHJ Luba KC to grant an application for possession of a property where Catherine Thiam resided pursuant to a tenancy dating to 2009. Richmond Housing Partnership ('RHP') was a social landlord. The application had originally been made in October 2020, on the basis that the rent had not been paid; Ms Thiam's son – who also lived at the property – had engaged in anti-social behaviour; Ms Thiam had failed to provide access to the premises to RHP and those who were to undertake maintenance work on RHP's behalf; and that the condition of the premises had deteriorate by acts of waste, neglect and default. HHJ Luba KC found that all of these grounds were amply made out and Ms Thiam appeared

to be living in a condition of considerable self-neglect. The first-instance judgment set out that Ms Thiam was considered to be a hoarder, had a differential (but unconfirmed) diagnosis of schizophrenia, and had delusional beliefs that the materials she was keeping were part of a business of selling second-hand clothes. Ms Thiam was considered to be disabled under the Equality Act, and the first-instance judge concluded that there was a causal link between her disability and the reasons possession was being sought. Her schizophrenia was untreated, and she had not engaged with the local mental health team.

The Official Solicitor represented Ms Thiam in the proceedings, and did not appear to contest these findings. The central argument of the Official Solicitor was a counterclaim that "*'the decision to seek possession amounted to unlawful discrimination on the grounds of disability and that for that reason either the application for possession should be refused or, as a matter of discretion under section 7(4) of the 1988 Act, possession should not be granted. The Judge accepted that the consequences of the tenant's mental illness were such that the failures that led to RHP's reliance on Ground 13 of the Schedule 2 grounds for possession were matters that occurred in consequence of the tenant's mental illness and therefore in consequence of a disability. The outcome of the application for possession therefore turned on the issue of justification"* (paragraph 8). It was accepted that RHP was pursuing a legitimate aim, and the first-instance judge found (following a contest) that the possession order was proportionate.

On behalf of Ms Thiam, the Official Solicitor raised three grounds of appeal: (1) an inadequate reasons challenge (which was rejected); (2) that the first instance judge had failed to determine the [tenant's] pleaded case that RHP had failed to seek and put in place specialist intervention; and (3) the first instance judge had erred in law when he determined that RHP did not have the power or skill to apply to the Court of Protection. RHP had referred Ms Thiam to local authority social services, but it was argued that "*RHP ought to have taken steps to involve organisations with special experience of working with hoarders to tackle situations such as the one that existed in this case*" (paragraph 15), or applied to the Court of Protection to seek orders to help connect Ms Thiam with support.

Swift J considered that the context of the relationship between Ms Thiam and RHP was important in determining whether its application for possession was proportionate:

> *17.* […[*Section 15(1)(b) of the 2010 Act concerns whether what the defendant did (the unfavourable treatment) was a proportionate response in the circumstances that prevailed, when account is taken of the claimant's disability including, in the circumstances of this case, the contribution that disability made to the state of affairs that RHP sought to address. The proportionality inquiry that section 15(1)(b) requires must also take account of context. In this instance some relevant context is provided by the contractual relationship between RHP and the tenant, framed by the terms of the tenancy agreement. RHP has no relevant authority beyond this. It is not a local authority or a social services authority exercising statutory powers and having obligations to consider and promote the well-being of persons subject to illness or disability.*

It was established that the local authority's response had been 'inadequate' and that RHP had 'been leaning over backwards' to assist Ms Thiam. The first-instance judge found that RHP had done everything it 'sensibly and reasonably could' to assist Ms Thiam. RHP had also sought

injunctions to try to manage the difficulties with Ms Thiam, without success.

On Ground 2, Swift J found that there was no obligation of the landlord to "*engage specialists with expertise in assisting hoarders to help address the situation the tenant had created*" (paragraph 23). It was established that RHP had made the relevant referrals for help, and had tried to persuade Ms Thiam to accept help. Swift J declined to find that:

> *the obligation to act proportionally imposed by section 15(1)(b) of the 2010 Act required RHP itself to engage specialist help for the tenant. Taking such a step would go well beyond anything ordinarily or, in the circumstances of this case, reasonably within the ambit of a landlord and tenant relationship. It was entirely consistent with the section 15(1)(b) obligation for RHP to submit that interventions of that sort should be the responsibility of the social services department rather than the landlord. Mr Strelitz, counsel for RHP, also pointed to the likely cost of such specialist services and the finite resources of a social landlord such as RHP (paragraph 25)*

Swift J also considered that these efforts would have very likely been futile, as Ms Thiam had a delusional disorder and was not consenting to the sort of help which was being suggested.

On Ground 3, Swift J considered that "*any such application to the Court of Protection would have been speculative. Any chance of success before the Court of Protective would be contingent on a conclusion that the tenant lacked capacity in a relevant respect. Such a conclusion would not have been close to a foregone conclusion…. Even if the issue of capacity were overcome it is unclear what order might have been sought on an application to the Court of Protection made by RHP*" (paragraph 30).

Swift J concluded at paragraph 31 that:

> *The nature of the application to the Court of Protection that would therefore have been necessary leads to the second reason why this ground of appeal fails. The course now suggested as one required by section 15(1)(b) to the 2010 Act would have required RHP to incur significant expenditure on litigation (legal costs and no doubt also the costs of expert evidence) in pursuit of an exercise that was speculative. These were the matters averted to by the Judge at paragraph 67 of his judgment. That would go well beyond any step that could legitimately be expected of a landlord and well beyond anything that could reasonably be considered as a requirement of a proportionate approach on the facts of this case.*

The human rights of older persons

On 3 April, UN Member States in the Human Rights Council in Geneva adopted a resolution to create a new intergovernmental working group to draft a UN Convention on the human rights of older persons. The next steps at the UN level will be to determine how the new intergovernmental working group will be resourced and organised.

SCOTLAND

AWI law reform – the latest

Scottish Government has intimated that the First Minister is expected to make an announcement on 6th May. By then this edition of the Report will have gone to press, even if still awaited by subscribers. It is anticipated that the First Minister will substantially advance the next session of the Scottish Government's Programme for Government announcement. Normally the Programme for Government is announced in or around early September, for the remainder of the parliamentary year ahead. Because of the imminence of elections to the Scottish Parliament in 2026, the First Minister will on 6th May 2025 make an announcement which will cover the Scottish Government's policy and legislative ambitions for the year to the elections to the Parliament on 6th May 2026, maximising the time for delivery, before any legislation that has not completed its passage through the Parliament prior to the recess before the election will be lost. While it is entirely for Ministers to decide what to include in the announcement, it may reasonably be anticipated that this would provide the First Minister with the opportunity to offer an update on the promised AWI Amendment Bill.

In advance of the First Minister's announcement, on 2nd May 2025 Maree Todd MSP, Minister for Social Care, Mental Wellbeing and Sport, issued a letter to several relevant consultees and stakeholders indicating that work on the promised AWI Amendment Bill will continue beyond September 2025, with workstreams on Supported Decision Making, Deprivation of Liberty, and Forced Detention and Covert Medication, "as well as assessing each section of the current Act through a continuous improvement lens". The Minister has indicated her "expectation of bringing forward an amendment Bill early in the next parliamentary term". That does indicate that urgently required reforming legislation will not as promised be introduced during the current parliamentary session, which ends when the Parliament goes into recess this summer, nor prior to the 2026 elections, following which the nature of the future Scottish Government will be known.

It is helpful that the Minister acknowledges that "this decision may be disappointing". At the same time she re-affirms her commitment "to modernising the legislation, to reflect international standards on human rights in particular"; and states her belief that further time is required "to get this right for both the vulnerable individuals at the heart of AWI as well as those working to protect and support them".

The Minister cites as reasons for the delay the need to modernise the AWI legislation and "risks relating to European Convention on Human Rights (ECHR) non-compliance in relation to deprivation of liberty". These are all matters that have been well known, at least since Scottish Law Commission commenced work on its 2015 Report which offered legislation to enable deprivations of liberty to be lawfully authorised, and as regards needs to improve AWI legislation at least since responses were submitted to Scottish Government on that topic in 2016.

On balance, "we are where we are", and in recent issues of this Report we have stressed how very short is the timescale envisaged in the 2024-2025 Programme for Government of introducing legislation before this summer's parliamentary recess. The worst outcome would have been inadequate legislation, ticking just a few boxes, and doing so in a hastily prepared way, but then a lull of indeterminate duration for a further wave of legislation. More information and consideration, and the terms of the forthcoming Programme for Government to be intimate don 6th May, will help form an assessment of the

advantages and disadvantages of the course intimated by the Minister. We shall defer making any such assessment at least until the July Report.

Adrian D Ward

Another SGO unfit for recognition

In *Aberdeenshire Council v SF (No.2)*, [2024] EWCOP 10, the Court of Protection found itself unable to accept a Scottish guardianship order ("SGO") for recognition and enforcement, because it was so deficient as to be unlawful, among other defects. Reactions in Scotland were polarised. There were those who apparently did not see that decision coming, sooner or later and in one way or another, whether or not they ought to have done so. Their reaction was shock and dismay. On the other hand, it would appear that most if not all expert practitioners in the AWI field consider that there was nothing unique about this case. All have experience of encountering similar grave deficiencies, typically when dealing with small courts or inexperienced sheriffs.

One has to dismiss any suggestion that the *Aberdeenshire* case attained its notoriety because of some one-off errors by a particular sheriff. Even if they were, they were so fundamental as to be cause for re-examining the operation of Scotland's AWI regime as a whole.

One also hears suggestions that, in the Court of Protection, Scotland's procedures were viewed through an Anglo-centric perspective: that cannot be so, when at the heart of the case was compliance with Hague Convention 35 of 2000 on the International Protection of Adults, reproduced in identical terms, so far as material, in Schedule 3 of the Adults with Incapacity (Scotland) Act 2000 and Schedule 3 of the Mental Capacity Act 2005; and with the requirements of the Human Rights Act 1998. The criticisms arise as much from Scottish requirements as those of England & Wales. The outcome was that an English judge was impelled to refuse recognition and enforcement of an SGO in England.

Actions in response to the *Aberdeenshire* case have also been polarised. Very many sheriffs have evidently studied it and are taking full account of it. While as yet largely happening "behind the scenes", it would appear that major efforts are underway to put Scotland's house in order in relation to all relevant aspects of judicial handling of all AWI proceedings.

On the other hand, the basic message of that case apparently did not "get through" everywhere. One might reasonably have expected that in the short term there would at least be no repetition of anything so fundamentally deficient. Hence there appears to have been across-the-board astonishment and dismay that on 15th April 2025, following a hearing on 1st April 2025, Mrs Justice Theis DBE, Vice President of the Court of Protection, found herself similarly unable to order recognition and enforcement of an SGO, in the case of *Argyll and Bute Council v RF (by his litigation friend, the Official Solicitor)* [2025] EWCOP 12 (T3); and that the SGO considered in the *Argyll and Bute* case followed upon an application for a guardianship order made on 18th December 2024 and granted on 16th January 2025, apparently in complete disregard of all of the lessons from the decision in the *Aberdeenshire* case, fully reported and discussed in the Scottish legal press and elsewhere several months previously. See for example my three-part article published in May 2024 in Scots Law Times entitled: "Scotland in 2024: a human rights blackspot" (2024 SLT News commencing at 59; see in particular part 3 commencing 2024 SLT News 71, where *Aberdeenshire Council v SF* is considered from page 73 onwards).

As with the *Aberdeenshire* case, the decision in the *Argyll and Bute* case cannot be said to be Anglo-centric. It likewise founds principally upon the provisions of Hague 35 and relevant provisions of the Human Rights Act 1998. In a nutshell, the English court did not suggest that the 2000 Act was defective. In this latest case, however, on the facts narrated in the judgment, the procedure and whole approach adopted by both the local authority and the sheriff were so fundamentally contradictory to the requirements of justice, the fundamental purposes of relevant Scottish legislation, and respect for the basic human rights of persons with disabilities, as to demonstrate the persistence of apparently fundamental deficiencies.

At the time of the hearing before the Court of Protection, *RF* was 64 years old. He was born and brought up in the area of Argyll & Bute Council, which remained responsible for meeting his social and welfare needs. His father and two siblings still reside in that area. An "incapacity report" in December 2024 suggested that he had a cognitive impairment; another such report a week later suggested that he has a learning disability and a personality disorder. It seems that these were the two medical reports required by section 57(3)(a) of the 2000 Act. The judgment narrated that:

> *"About 30 years ago RF was involved in an accident following which it is reported his behaviour became more volatile although medical investigation did not establish any brain injury arising from the accident. The combination of this incident and the loss of a sibling resulted in RF exhibiting severe dysregulated behaviour from a young age."*

One suspects that the sibling may have died as a result of the same accident.

For a narrative of subsequent diagnoses, care and treatment, and proceedings in both countries prior to the SGO made on 16th January 2025, see Theis J's judgment. The 2025 SGO appointed the chief social work officer as welfare guardian and conferred the following powers:

> *(a) To decide where RF should live, to require him to live at that location, to convey him to that location and to return him to that location in the event of him absenting himself therefrom.*
>
> *(b) To decide and approve the appropriate level of care and supervision to be provided to RF to safeguard his health and wellbeing.*
>
> *(c) To decide whether RF should be permitted to participate in holiday and cultural and social events and if so the nature and extent thereof.*
>
> *(d) To authorise, where necessary and appropriate for the safety and protection of RF and others, any physical restraint including environmental restraint, by care providers who have completed the necessary restraint training provided it complies with all aspects of good healthcare and social care practice.*

One would suggest that "for the safety and protection of … others" in power (d) was incompetent under the jurisdiction of the 2000 Act, the purpose of which, in terms of the long title, was "*to make provision as to the … personal welfare of adults who are incapable by reason of mental disorder or inability to communicate*", and for connected purposes. One would suggest that issues of risks to the safety of others are matters for mental health legislation.

It appears to have been agreed by all participating parties that *RF* lacked capacity to conduct the proceedings and to make decisions

about his residence and care and support; nor was there any dispute that the court might not have had reason to believe that.

Points to note from the narrative in the judgment indicate that although in previous proceedings *RF* had been offered an independent advocate "to present his views" at any stage of that process, and had declined, this was not offered in relation to the 2025 proceedings. At no point was he asked for his views about the prospect of a guardianship order being sought, or that the chief social work officer should be guardian. It is narrated that he wanted to return to Scotland, and also to keep his existing care manager. Remarkably, the local authority mental health officer ("MHO") visited *RF* "in early December 2024" (one suspects for the purpose of preparing the MHO report), and "*did not ask him about Guardianship as he [the MHO] considered asking about that would cause unnecessary distress and agitation for RF*". That was surely a remarkably inappropriate reason for concealing from *RF* the nature of the proceedings to be taken against him, quite apart from the fact that it is difficult to envisage how any court could have complied with section 1(4)(a) of the 2000 Act without knowing his "wishes and feelings" about what was proposed.

It is also remarkable that the local authority, at a case conference in October 2024, seems to have planned for the application on a basis that supplanted the function of the court in presupposing what might have been the outcome if relevant considerations and information had been put to the court, and on that basis deciding what should and should not be done and reported to the court. Likewise there was evidence about what the local authority itself would have done by way of review upon granting of the SGO, rather than what should have been reported to the court to enable the court to keep the deprivation of liberty under review; and evidence about the support plan which appeared not to have been updated since March 2024, with no mechanism for review to consider whether the restrictions on *RF*'s liberty, including 2:1 support at all times, remained necessary and proportionate; nor for *RF* to have any independent support or representation as part of any review.

Following a helpful review of both Strasbourg and English jurisprudence, and the submissions of the parties, Theis J described her task as follows:

> *"The role of the court in this application is to consider, by way of a limited review in each case where an application for recognition and enforcement is made whether (1) the process whereby the order in question was made, and (2) the effect of that order, afforded sufficient protection for the EHCR rights of the individual who is the subject of the order."*

With reference to the three potential grounds for disapplication under Hague 35, she considered the issues of lawfulness, natural justice and public policy in relation to the SGO; the same considerations as led to the decision in the *Aberdeenshire* case.

On lawfulness, she confirmed that the parties were agreed that section 6 of the Human Rights Act 1998 applied, and the court could not act in a way that is incompatible with a Convention right. One might add, though she did not make this comment, that this requirement of course applied also to the decision of the Scottish court in granting the order. She commented that due to the nature of the 2025 SGO, and in particular the provisions in it regarding the deprivation of *RF*'s liberty, Articles 5, 6 and 8 of the European Convention required careful consideration. She pointed out, by reference to the jurisprudence of the Strasbourg Court, that while Article 8

contains no explicit procedural requirements, the decision-making process involved must be fair and such as to ensure due respect for the interests safeguarded by Article 8. On lawfulness she concluded, after discussion, that:

> *"RF was not joined as a party to the application, no independent advocate or safeguarder was appointed to represent him, despite the draconian nature of the orders being sought. RF depended on third parties (a combination of family members, social workers and clinicians) to ensure the Sheriff court had all the relevant information about his circumstances and his views. This does not, in my judgment, sit easily with the requirements of Article 5 (1) for an adult who is being deprived of his liberty to be afforded sufficient effective opportunity to be heard in the course of those proceedings. He did not have independent assistance to have effective access to the court and the opportunity of being heard. It remains unclear why the routes that are available to achieve this were not taken, such as through the involvement of an independent advocate or appointing a safeguarder."*

She continued by stating that in her judgment the steps taken by the MHO were:

> *"insufficient to discharge this obligation in the context of the order being applied for, with the powers it contained and for the period of time being sought. During his single visit in early December 2024 [the MHO] did not ask RF about the Guardianship application and RF was served with the application after this visit. There is no evidence of any further attempts to seek RF's views about the application after that (other than the brief reference to RF's reaction when served with the application), nor further consider the involvement of an independent advocate, nor other opportunity for RF to be represented. In those circumstances it is difficult to conclude that RF was given an effective opportunity to be heard on the application, which may require independent representation bearing in mind his circumstances and presentation. As a consequence, RF's Article 5(1) rights were not upheld. There was an absence of an effective opportunity for RF to be heard in the proceedings in which the 2025 Guardianship order was made and, as a result, was unlawful under s6(1) HRA 1998.*

On natural justice, she concluded that:

> *"I am satisfied that this case was not urgent, as the previous order had lapsed over six months earlier. RF was not given an effective opportunity to be heard and that omission amounted to a breach of natural justice."*

On public policy, she again pointed out that section 6 of the Human Rights Act 1998 provides that it is unlawful for a public authority to act in a way that is incompatible with a Convention right. She concluded that:

> *"The right under Article 5(4) for a review was determined in Winterwerp [Winterwerp v The Netherlands (1979) 2 EHRR 387] at [55] to require a review of lawfulness to be available at reasonable intervals. The 2025 Guardianship order made in RF's case was for three years. There is no mechanism in that order for reviews. Mr Ruck Keene draws the court's attention to the reference in [the MHO]'s report dated 18 December 2024 to the reviews of RF's position that would be conducted stating in the additional note he submitted he is 'due to review the order 12 weeks after it was made; and again at 6 months'. There is no evidence that has taken place. The support plan in the court bundle states it*

> *was created on 7 December 2024 but the next review date is six months prior to that in June 2024, and the contents suggest that it has not been amended since March 2024. The support plan does not contain any provision for a review to consider whether the ongoing restrictions on RF's liberty authorised by the 2025 Guardianship order remain necessary and proportionate or for RF to have any independent support and representation as part of that review."*

She rejected submissions that *RF* had the ability to apply to the court under section 71(1) of the 2000 Act, or that *RF* (or someone on his behalf) could raise his case with the Mental Welfare Commission. That did not meet the rights protected by Article 5(4):

> *"In my judgment RF's Article 5 rights would be 'theoretical and illusory' not 'practical and effective'. There was no mechanism in place to give practical effect to those provisions for RF bearing in mind the basis for the proceedings regarding RF's mental capacity and the lack of any effective review process. The absence of this mechanism, in the context of the extent of the powers given in the order to deprive RF of his liberty, the length of time the order is for, the likelihood of a possibility of a move back to Scotland, RF's inability to trigger a review himself and the absence of any representation to do so on his behalf for three years without a structure for review that RF is able to access is, in my judgment, beyond a period that could be considered to be reasonable. This is in the context of the maximum one year period in the MCA 2005 for the authorisation of a deprivation of liberty pursuant to Sch A1, para 29(1)."*

No party to the proceedings had suggested that if grounds for non-recognition were held by the court to be established, the court nevertheless could exercise a discretion and recognise the order anyway. On the basis that, in addition to being unlawful, the 2025 SGO was made in breach of natural justice and that recognition of it would be manifestly contrary to public policy, she concluded that she should exercise her discretion to refuse recognition of the 2025 order.

It is perhaps relevant to observe that, as with the *Aberdeenshire* case, it would appear that the Court of Protection had only the terms of the guardianship order itself as to the basis on which the sheriff (in each case) decided that it was appropriate to issue the order. At various times in these Reports, where I have criticised decisions for apparent deficiencies such as failure to comply fully with section 1 principles, I have subsequently learned that there had at least been some attempt to do so. That applies even to cases where written judgments have been issued, but they have failed to narrate such steps. It can reasonably be asserted that when matters such as the liberty of an adult citizen, in terms of Article 5 of the European Convention, is at risk, it is plainly inappropriate that a judgment narrating all the steps taken by the sheriff should not be available. One might reasonably anticipate that in due course the approach of the judiciary will be that on human rights and other grounds such judgments must always be issued in AWI cases, apart – exceptionally – from any occasional situations where there might be no need to do so. Moreover, a requirement to record in writing that all necessary steps have been taken, and all necessary issues addressed, not only provides clarity to which those with an interest in particular proceedings are entitled to receive. Across several cases, it reaffirms the need for such steps to be taken, constantly reinforces the need to take such steps, and provides public reassurance that they are being taken. Such a requirement also helps to ensure that in individual cases necessary steps are taken, with clear reasoning for the outcome of doing so.

The decision in the Court of Protection in the *Argyll & Bute* case demonstrates that even after the *Aberdeenshire* case fundamentally deficient decisions, to the extent that they are unlawful, can still be made and in at least the *Argyll & Bute* case have been made. That is a systemic failure. It is a unique characteristic of the AWI jurisdiction, that it is an inquisitorial rather than adversarial jurisdiction: the sheriff must comply with the section 1 principles in relation to every order, regardless of what may be averred, produced or pled. To that extent it is fundamentally more different from civil or criminal jurisdictions than they are from each other. It is unfortunate that in both cases the sheriffs apparently received no necessary assistance from solicitors acting. However, there can be no expectation that sheriffs will receive any such guidance in complying with the obligation upon them, and the lack of such guidance does not remove the obligation of sheriffs to comply. The principal victims of unfairness in consequence of such miscarriages of justice are of course the adults affected. In these two cases, one cannot escape the impression that "the system" has been unfair to the two sheriffs involved, given that the recommendation by Scottish Law Commission in 1995 to allocate the adults with incapacity jurisdiction to sheriffs was predicated upon it being dealt with by suitably specialised sheriffs. That is happening in practice in a number of larger courts. The challenge to "the system" is to ensure that it happens *de facto* in all cases, regardless of the size of the court and the circumstances in which applications under the 2000 Act might be allocated to particular sheriffs.

I have opted not to name the sheriffs who granted the SGOs in each of these cases.

Adrian D Ward

Assisted Dying for Terminally Ill Adults (Scotland) Bill

The Scottish Parliament's Health, Social Care and Sport Committee's Stage 1 Report on the Bill was published on 30th April 2025, with the Stage 1 debate and vote on the Bill anticipated for 13th May 2025.

Jill Stavert

Scottish Commission for People with Learning Disabilities (SCLD)

The SCLD has published a report on *Legislative, cultural and practice perspectives informing Supported Decision Making in Scotland*, which is also available in full and easy read formats. It highlights that supported decision-making is crucial for people with learning disabilities to feel more independent and empowered. However, it also acknowledges that implementing effective supported decision-making may require changes in the law, practice and societal attitudes towards people with learning disabilities as a society.

Jill Stavert

Centre for Mental Health Practice Policy and Law Research (Edinburgh Napier University) updates

1. Webinar series on Restraint and Restrictive practices

The Centre is holding a series of webinars on Restraint and Restrictive Practice in response to calls for clearer and more consistent guidance for, and avoiding, its use.

The first webinar on restraint and restrictive practices relating to children and young persons across all settings was held on 29th April, and there are two more in the series:

15th May 2025: Restraint and Restrictive Practice (Adults).

29th May 2025: Restraint and Restrictive Practice: Moving Forward

All events are free to attend but you must reserve a place via Entbrite by clicking on the links above.

2. CPD modules available

The Centre is currently offering three CPD modules on mental health and capacity law (and related rights-based approaches) and related practice:

1. Introduction to mental health and capacity law and related human rights
2. Capacity and Supported Decision-Making
3. Mental and physical care and treatment and consent

For details about, and to register for, the courses follow the links above.

Jill Stavert

Editors and contributors

Alex Ruck Keene KC (Hon): alex.ruckkeene@39essex.com

Alex has been in cases involving the MCA 2005 at all levels up to and including the Supreme Court and the European Court of Human Rights. 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. To view full CV click here.

Victoria Butler-Cole KC: vb@39essex.com

Victoria regularly appears in the Court of Protection, instructed by the Official Solicitor, family members, and statutory bodies, in welfare, financial and medical cases. She is Vice-Chair of the Court of Protection Bar Association and a member of the Nuffield Council on Bioethics. To view full CV click here.

Neil Allen: neil.allen@39essex.com

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. To view full CV click here.

Arianna Kelly: Arianna.kelly@39essex.com

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.

Nicola Kohn: nicola.kohn@39essex.com

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 5th edition of the *Assessment of Mental Capacity: A Practical Guide for Doctors and Lawyers* (BMA/Law Society 2019). To view full CV click here.

Katie Scott: 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.

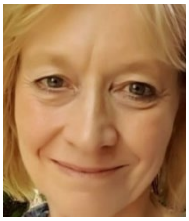
Nyasha Weinberg: Nyasha.Weinberg@39essex.com

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

Scotland editors

Adrian Ward: 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.



Jill Stavert: j.stavert@napier.ac.uk

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 also does 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.

Our next edition will be out in June. 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.

Sheraton Doyle
Senior Practice Manager
sheraton.doyle@39essex.com

Peter Campbell
Senior Practice Manager
peter.campbell@39essex.com

Chambers UK Bar
Court of Protection: Health & Welfare
Leading Set

The Legal 500 UK
Court of Protection and Community Care
Top Tier Set