



Welcome to the March 2022 Mental Capacity Report. Highlights this month include:

- (1) In the Health, Welfare and Deprivation of Liberty Report: Capacity to refuse treatment while on a CTO and deprivations of liberty for children;
- (2) In the Property and Affairs Report: testamentary capacity;
- (3) In the Practice and Procedure Report: naming P, public or private hearings, judicial visits and litigation capacity;
- (4) In the Wider Context Report: voting rights and disability, sufficiency of care and Article 8, and Article 2 inquests;
- (5) In the Scotland Report: Guardians' remuneration and the Scottish Mental Health Law;

You can find our past issues, our case summaries, and more on our dedicated sub-site [here](#), where you can also find updated versions of both our capacity and best interests guides.

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

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### Testamentary capacity: when to get a medical assessment of capacity

*Skillett v Skillett* [2022] EWHC 233 (Ch) (Philip Mott QC, sitting as a Deputy High Court Judge)

#### *Mental capacity – Testamentary capacity*

In this case, the court (Philip Mott QC sitting as a deputy High Court judge) had to determine issues relating to testamentary capacity and knowledge and approval.

As regards the former, the case is a good example of how the court approaches the issue, in particular the question of what approach the court should take to the evidence of a solicitor who has seen the testator, prepared a will and supervised its execution.

The solicitor was a private client solicitor of many years standing and the testator was 78 and suffering from Parkinson's disease. The solicitor found no reason to doubt T's capacity and did not ask for a medical practitioner to witness or approve the will having assessed T's capacity.

In the end, having heard from lay and joint expert witnesses, the court held T capacitous but remarked that the litigation may have been avoided if that step had been taken (see para 32).

A separate issue arose regarding knowledge and approval. It was said that the aim of the will was to achieve equality between the siblings. One was left a piece of land, said to be worth £50,000, the others £50,000 each and the residue split equally.

The land had increased in value so the sibling who got the land benefitted more than the others. One of the disappointed siblings, who opposed the grant, argued that T had not the required knowledge of the consequences of the disposition.

The court rejected that saying that an oversight or change in circumstances is not sufficient to invalidate a will (see para 72). As a practice point, a will drafter might want to point out to T the possibility of changes in circumstances undermining assumptions and record the response.

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Victoria regularly appears in the Court of Protection, instructed by the Official Solicitor, family members, and statutory bodies, in welfare, financial and medical cases. Together with Alex, she co-edits the Court of Protection Law Reports for Jordans. She is a contributor to 'Assessment of Mental Capacity' (Law Society/BMA), and a contributor to Heywood and Massey Court of Protection Practice (Sweet and Maxwell). To view full CV click [here](#).



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



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



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Rachel has a broad public law and Court of Protection practice, with a particular interest in the fields of health and human rights law. She appears regularly in the Court of Protection and is instructed by the Official Solicitor, NHS bodies, local authorities and families. To view full CV click [here](#).



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Steph regularly appears in the Court of Protection in health and welfare matters. She has acted for individual family members, the Official Solicitor, Clinical Commissioning Groups and local authorities. She has a broad practice in public and private law, with a particular interest in health and human rights issues. She appeared in the Supreme Court in *PJ v Welsh Ministers* [2019] 2 WLR 82 as to whether the power to impose conditions on a CTO can include a deprivation of liberty. To view full CV click [here](#).



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Arianna has a specialist practice 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 matters relating to the inherent jurisdiction of the High Court. Arianna works extensively in the field of community care. To view a full CV, click [here](#).



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



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

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



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## Scotland editors

**Adrian Ward:** [adw@tyoung.co.uk](mailto:adw@tyoung.co.uk)

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



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



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## Conferences

Members of the Court of Protection team are regularly presenting

**Centre for Health, Law, and Society Symposium: Redrawing the Boundaries of Mental Health and Capacity Law** The University of Bristol Law School is holding an online conference on **Wednesday, 9 March from 2:00-5:00PM**. The online event will be split into three sessions, and include Dr Camillia Kong as keynote speaker, and a response from Dr Lucy Series. The link to the event is here and registration is via eventbrite: <https://www.bristol.ac.uk/law/events/2022/chls-symposium-2022.html>

**UK Mental Health Act reform: Can it deliver racial justice and ensure the rights and wellbeing of people with mental health problems?** A free conference is being held online on 9 March, co-hosted by Race on the Agenda and Mind, the title being: For more details, and to register, see [here](#).

**7<sup>th</sup> World Congress on Adult Capacity, Edinburgh International Conference Centre [EICC], 7-9 June 2022** The world is coming to Edinburgh – for this live, in-person, event. A must for everyone throughout the British Isles with an interest in mental capacity/incapacity and related topics, from a wide range of angles; with live contributions from leading experts from 29 countries across five continents, including many UK leaders in the field. For details as they develop, go to [www.wcac2022.org](http://www.wcac2022.org). Of particular interest is likely to be the section on “Programme”: including scrolling down from “Programme” to click on “Plenary Sessions” to see all of those who so far have committed to speak at those sessions. To avoid disappointment, register now at “Registration”. An early bird price is available until 11<sup>th</sup> April 2022.

### **The Judging Values and Participation in Mental Capacity Law Conference**

The *Judging Values in Participation and Mental Capacity Law* Project conference will be held at the [British Academy](#) (10-11 Carlton House Terrace, London SW1Y 5AH), on **Monday 20<sup>th</sup> June 2022 between 9.00am-5.30pm**. It will feature panel speakers including Former President of the Supreme Court Baroness Brenda Hale of Richmond, Former High Court Judge Sir Mark Hedley, Former Senior Judge of the Court of Protection Denzil Lush, Former District Judge of the Court of Protection Margaret Glentworth, Victoria Butler-Cole QC (39 Essex Chambers), and Alex Ruck Keene (39 Essex Chambers, King’s College London). The conference fee is £25 (including lunch and a reception). If you would like to attend please register on our events page [here](#) by 1 June 2022. If you have any queries please contact the Project Lead, Dr Camillia Kong: [camillia.kong@bbk.ac.uk](mailto:camillia.kong@bbk.ac.uk).

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

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